AFFIRMATIVE ASYLUM PROCEDURES MANUAL
OFFICE OF INTERNATIONAL AFFAIRS
ASYLUM DIVISION

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I. BACKGROUND INFORMATION

A. MANUAL CONTENTS

This Manual provides information on how to process an affirmative asylum application within an asylum office. Unless specifically indicated, an asylum office Director determines which personnel (e.g., Asylum Officer, Asylum Clerk) perform certain procedures outlined in this Manual.

1. Manual Structure

The Manual is divided into five (5) sections. The first section, "*Background Information*," lists references that all asylum personnel should be familiar with in order to process an asylum application. The second section, "*The Affirmative Asylum Application*," follows the processing of an application from the point at which an applicant receives a blank asylum application, through the issuance of a decision by the Immigration and Naturalization Service (INS).

The third and most lengthy section, "*Expanded Topics*," provides more detail on some topics referred to in the second section, and includes topics that may cause an asylum application to be handled differently from the norm. While it is not possible to anticipate all possible variations, this section addresses the most common.

The fourth section, "*How To…*" explains how to prepare certain documents that asylum office personnel issue to applicants in support of a decision to approve, deny or refer an asylum application.

The fifth and final section, "*Appendices*," discusses how to use the appendices referred to in the Manual.

2. How to Search the Manual

This Manual is not indexed, but contains a detailed Table of Contents to assist asylum office personnel in locating needed materials. In addition, asylum office personnel can search the Manual electronically. In Microsoft Word, the search feature can be added as an icon on the standard toolbar. The search feature can also be accessed by selecting the drop-down menu "Edit" and selecting the "Find" feature. Key words relating to the topic can be typed in and searched. A similar feature is available in Adobe Acrobat. For more assistance on electronic word searches, consult with the asylum office's ADP officer or Quality Assurance/Trainer.

3. General Notes

"Day" as used in this Manual refers to a calendar day unless "business day" is specified.

B. REFERENCES

1. Written and Electronic Materials

This Manual is the main procedural guide to processing affirmative asylum applications. The following reference materials are available to asylum office personnel and should be consulted for additional procedural guidance:

- Refugee Asylum and Parole System User's Manual (hereinafter referred to as RAPS User's Manual)
- Refugee Asylum and Parole System Reports Manual (hereinafter referred to as RAPS Reports Manual
- ABC/NACARA Procedures Manual
- Records Operations Handbook (M-407)
- PC-RAFACS User Manual
- NFTS User Manual (After NFTS [National File Tracking System] has been deployed to the asylum office to replace PC-RAFACS)
- AOBTC Basic Training Materials (Specific Lesson Plans are referred to in this Manual)
- Credible Fear Procedures Manual
- Langlois, Joseph E. INS Asylum Division. *Implementation of Amendments to Asylum and Withholding of Removal Regulations, Effective March 22, 1999*, Memorandum to Asylum Office Directors, Supervisory Asylum Officers, QA/Ts and Asylum Officers (Washington, DC: 18 March 1999), 17 pp. [also referred to as Reasonable Fear Procedures].
- Immigration and Naturalization Service Easy Research & Transmittal System (hereinafter referred to as INSERTS). INSERTS is a CD-ROM that contains INS field manuals, administrative manuals, legal opinions and laws and regulations. It may also be accessed through the INS Intranet.
- INS web site at www.ins.usdoj.gov

Samples of all standard INS forms (e.g. I-94 card or Form G-28) that appear in this Manual may be found in the *Forms Binder* of the AOBTC Basic Training Materials.

2. Sources of Authority

See the AOBTC Basic Training Materials, *Overview of the Asylum Program –Part II: Sources of Authority*. The adjudication of an asylum application is governed by:

- Immigration and Nationality Act (INA), particularly sections 208 and 235.
- Title 8, Code of Federal Regulations (8 CFR), particularly part 208.
- Precedent Board of Immigration Appeals (BIA) decisions
- Federal Court decisions (including, U.S. District Courts, U.S. Courts of Appeal and the U.S. Supreme Court)
- INS General Counsel (GENCOU) Opinions

3. Computer Databases

Asylum Office personnel use several computer databases that include:

a. Refugee Asylum and Parole System (RAPS)

RAPS tracks the processing of affirmative asylum and suspension/special rule cancellation (NACARA 203) applications through the affirmative asylum process. RAPS also contains an Executive Office for Immigration Review (EOIR) screen that allows a viewer to see whether a particular alien-number (A-number) pertains to a case within the Immigration Court system, and the status of that case. Asylum office personnel have access to update and change information in RAPS. Service Centers have access to RAPS for the purpose of entering new filings and adding dependents. Other INS branches only have "Look" access to this system.

b. Central Index System (CIS)

CIS is the main file control system for INS. CIS contains information about file location, duplicate filings, and whether a particular benefit has been granted to an alien. Some asylum office personnel have access to update and change information in limited areas of the database. In addition, asylum office personnel may access the FBI Tracking System for fingerprint checks through the FBIQUERY screen.

See Section III(L)(6) for more information on the FBIQUERY screen.

c. Deportable Alien Control System (DACS)

DACS tracks information about aliens in detention, and in the deportation, exclusion and removal processes. Asylum office personnel have only "Look" access to this system.

d. Nonimmigrant Information System (NIIS)

NIIS contains data relating to nonimmigrant arrivals and departures to and from the United States. Asylum office personnel have only "Look" access to this system.

e. Computer Linked Information Management System (CLAIMS 3)

CLAIMS tracks the processing of applications for employment authorization documents (EADs), and many fee-based benefit applications that are submitted to INS. CLAIMS 3 contains a mechanism to link to FBIQUERY. Asylum office personnel only have "Look" access to this system.

f. Automated Nationwide System for Immigration Review (ANSIR)

ANSIR is the system used by EOIR and the asylum office to schedule an applicant for a hearing before the Immigration Court. Some asylum office personnel have access to schedule a hearing.

g. Receipt and Alien-File Accountability Control System (RAFACS)

RAFACS tracks the physical location of an Alien-file (A-file), Temporary file (T-file) or Work Folder (W-file) within an asylum office. Asylum office personnel have access to change and update information in the system.

h. Automated Biometric Identification System (IDENT–Asylum)

IDENT–Asylum checks the fingerprints of asylum applicants to inform asylum office personnel whether an applicant was seen at any of the eight (8) asylum offices, was apprehended at the border, or has a record in the INS lookout database. Asylum office personnel have access to input information into the system.

See Section II(I)(1) for more information on the application of IDENT in an asylum office.

i. National Automated Immigration Lookout System II (NAILS II)

NAILS II is a component of IBIS, the Interagency Border Inspection System. IBIS is an interagency effort by INS, U.S. Customs Service (USCS), Department of State (DOS), and the Department of Agriculture (DOA) to improve border enforcement and control, and to facilitate inspection of applications for admission to the United States. The system provides ports-of-entry (POE) and other interior offices with the ability to quickly identify persons, detect fraud, share intelligence, and prosecute violators.

NAILS II contains information from TIPOFF. TIPOFF contains classified and non-classified information from INS, USCS and DOS about suspected terrorists. If an individual is in TIPOFF, his/her name, date of birth, and country of birth will appear in NAILS II as being a "TIPOFF." An AO must immediately report any TIPOFF hit to his/her supervisor and the Security Officer (SO). The SO must contact the HQASM Supervisor, Quality Assurance/Training, the Asylum Division Director, or Office of International Affairs Director at asylum headquarters (HQASM), 202-305-2663.

j. Interagency Border Inspection System (IBIS)

The Interagency Border Inspection System (IBIS) is "a multi-agency database of lookout information … initiated in 1989 to improve border enforcement and facilitate inspection of individuals applying for admission to the United States at ports-of-entry and pre-inspection facilities. The IBIS initiative began in response to both legislative and administrative mandates, as well as to evolving agency needs for a more efficient primary inspection at land, air and sea ports-of-entry." *INS Inspector's Field Manual*, Chapter 33. The system itself resides at the U.S. Customs Service Data Center on the Treasury Enforcement Communications System (TECS). *U.S. Customs IBIS Fact Sheet*. "In addition to the U.S. Customs Service and the INS, law enforcement and regulatory personnel from 20 other federal agencies or bureaus use IBIS. Some of these agencies are the FBI, Interpol, DEA, ATF, IRS, the Coast Guard, the FAA Secret Service and the Animal Plant Health Inspection Service, just to name a few. Also, information from IBIS is shared with the Department of State for use by Consular Officers at U.S. Embassies and Consulates." *Id.*

Through IBIS, users can gain access to the FBI's National Crime Information Center (NCIC). NCIC, established in 1967, is "a nationwide information system dedicated to serving and supporting criminal justice agencies -- local, state, and federal -- in their mission to uphold the law and protect the public. [It] serves criminal justice agencies in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Canada, as well as federal agencies with law enforcement missions." *See* FBI Criminal Justice Information Services Division web site at http://www.fbi.gov/hq/cjisd/ncic.htm. NCIC contains information on wanted persons, missing persons, stolen property, criminal history, criminal investigations, terrorists, and foreign fugitives. *See* U.S. Customs Service. *NCIC/NLETS* (July 2001). Currently, IBIS users in the adjudications environment are limited to NCIC's "hot files," also known as wants and warrants. Access to NCIC's criminal history data through IBIS is not authorized at this time. *See* Yates, William R. Immigration Services Division. *Utilization of the National Crime Information Center (NCIC)*, Memorandum to Regional Directors, et al. (28 September 2001).

The justification for conducting IBIS checks on benefit applications is two-fold. First, it furthers the mission of the INS to have all relevant information at its disposal when adjudicating benefit applications, in order to prevent individuals from obtaining immigration benefits for which they are ineligible. Second, it helps to fulfill INS law enforcement responsibilities by assisting law enforcement in identifying risks to the community and/or national security. Guidance on using IBIS is included in *Identity and Security Checks*, Section (III)(L), below, and in the *INS Immigration Services Division IBIS Standard Operating Procedures (SOP)*, which was distributed to all asylum offices in December 2002, and may be found on the IBIS Bulletin Board in cc:Mail.

II. THE AFFIRMATIVE ASYLUM APPLICATION

A. ALIEN OBTAINS ASYLUM APPLICATION PACKET

1. How to Obtain

8 CFR 208.3

Prospective asylum applicants may obtain an asylum packet by:

INS does not charge a fee to provide an asylum packet to a prospective applicant; however, a fee may be charged to an attorney or

- Calling the INS forms request line: 1-800-870-FORM (3676).
- Requesting the packet in person at an INS District Office.

- Requesting the packet in person or by mail from an Asylum Office.
- Requesting the packet from a member of the private immigration bar or an agency accredited by the Board of Immigration Appeals (BIA).
- Downloading the form from the INS web site at www.ins.usdoj.gov.

representative if s/he orders large quantities.

2. Asylum Packet Contents

An asylum packet consists of:

- The most recent acceptable version of the Form I-589, *Application for Asylum and for Withholding of Removal*
- Form AR-11: *Alien Change Of Address*
- Notice of Counsel and Consequences of Filing
- Executive Office for Immigration Review (EOIR) Representative List

3. What Applicant Must File

At a minimum, an applicant must submit the following to apply for asylum:

"Original I-589" is an I-589 with the original signature plus any supplemental sheets and/or statements.

- Original I-589, which is completed in English and signed by the applicant and preparer, if any.
- Two (2) copies of the completed and signed I-589.
- One (1) passport-style photograph.

If an applicant has a spouse or child in the U.S. who wants to be included as a dependent on the I-589, an applicant must also submit the following for each dependent:

- One (1) copy of his/her asylum application that includes the dependent's information.
- At a minimum, an applicant is permitted to submit only copies of pages 1, 2, 3, and 9 (including Supplement A Form I-589 as needed for additional family members) of the P.A.'s application in lieu of the entire I-589 and supplemental documentation.
- One (1) photograph of the dependent that s/he wants to add, stapled on page 9 of the dependent's copy.
- One (1) copy of evidence of relationship:
- A marriage certificate, if the dependent is a spouse.
- A divorce decree, if the P.A. or spouse was previously married.
- A birth certificate, if the dependent is a child.

If a P.A. does not have and is unable to obtain a marriage or birth certificate, s/he may submit a copy of secondary evidence of relationship. Secondary evidence may take the form of historical evidence; such evidence must have been issued contemporaneously with the event that it documents and may include, but is not limited to, medical records, school records and religious documents. Affidavits may also be accepted.

8 CFR 204.2(d)(2)(v) discusses secondary evidence to support a petition for child or son or daughter.

If an affidavit is the secondary evidence, the P.A. must submit one (1) original and two (2) copies of an affidavit from at least one (1) person for each event the P.A. is trying to prove. A relative or other person may provide an affidavit, and s/he need not be a United States citizen or lawful permanent resident. An affidavit must:

- Fully describe the circumstances or event in question and fully explain how the affiant acquired knowledge of the event(s).
- Be sworn to, or affirmed by, a person who was alive at the time of the event(s) and have personal knowledge of the event(s) (date and place of birth, marriage, etc.) that

the P.A. is trying to prove.

- Show the full name, address, date and place of birth of the affiant, and indicate the relationship between him/her and the P.A.

B. APPLICANT FILES I-589

1. Filing with the Service Centers

An applicant mails his/her I-589 and any supporting documentation to the appropriate Service Center, determined by the applicant's address. A list of Service Centers and the areas they service are outlined in the I-589.

The term "I-589" refers to a Form I-589 and any supporting documentation.

2. Filing Directly with the Asylum Offices

An asylum applicant may file his/her I-589 with the asylum office at the express consent of the Asylum Office Director or when a principal/dependent relationship has ceased to exist and the former dependent is filing an asylum application as a principal. See 8 CFR 208.5(b)(2). A Directors' consent to file in the local office is normally given under the following circumstances:

Check with local asylum office management for a list of all cases that may be directly filed.

- Expeditious processing is required.
- Previously denied or withdrawn asylum application where the applicant was not placed into deportation, exclusion or removal proceedings.

C. INS RECEIVES I-589

1. I-589 Filed with the Service Center

The Service Center is responsible for:

- Receiving and receipting an I-589.
- Checking available databases for duplicate filings and multiple alien-numbers (A-numbers) or for evidence that the applicant is/has been in proceedings.
- Matching an I-589 with already existing alien-files (A-files) where they exist.
- Creating a new A-file where there is no prior A-file for the asylum applicant.
- Entering the I-589 into RAPS and forwarding the file to the appropriate asylum office.

2. I-589 Filed Directly with the Asylum Office

An asylum office processes a direct filing of an I-589 as follows:

a. Mailroom Processing

On the same day of receipt, asylum office personnel stamp the I-589 with the date of receipt and bring it to the attention of a Supervisory Asylum Officer (SAO) or Quality Assurance/Trainer (QA/T), depending upon local policy. The SAO or QA/T determines whether the I-589 fits into one of the categories for which a direct filing is permitted and reviews the I-589 to ensure it meets the specifications for completeness. If an I-589 is erroneously filed with the asylum office or incomplete, asylum office personnel return it to the applicant with written instructions indicating the corrective action that the applicant must take in order to properly file the application.

b. Computer Entries

No information is entered in INS databases until it is determined that the I-589 is properly
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filed with the asylum office and that the I-589 meets the specifications for completeness. Once the I-589 has been reviewed and found properly filed and complete, asylum office personnel enter the application into RAPS on the Case Entry (I589) screen within one business day of receipt. Asylum office personnel first check the applicant's personal information against information in CIS, DACS, and RAPS for duplicate files. If none exist, asylum office personnel create an A-file by assigning the applicant an A-number, and entering the information into RAPS. If an A-file already exists, asylum office personnel order the A-file and create a Temporary File (T-file).
The name of an applicant who has only one name is entered into RAPS, CIS or other system as a last name. In the first name field, enter "No Given Name." Dependents are added using the F10 ("Add Rel") function key.

For further information on creating an A-File, see Records Operations Handbook (M-407), chapter 2 in INSERTS.

Asylum office personnel send a copy of the I-589 to DRL/CRA in accordance with Section II(L)(2) of this Manual, *AO Sends a Copy of I-589 Sent to DRL/CRA, if not Previously Sent*. For high-profile cases, HQASM will forward an additional copy of the I-589 to DRL/CRA with the assessment when the decision is submitted for HQASM/QA review.

c. Accepting a New I-589 After Denial or Withdrawal of a Previous Application

An asylum applicant may apply for asylum after the issuance of a final denial, or dismissal of a motion to reopen or reconsider by the asylum office as long as s/he is not under the jurisdiction of the Immigration Court. An applicant who withdrew an asylum application may also submit a new application, as long as the asylum office has jurisdiction to hear the claim.

A withdrawn asylum application cannot be reopened, except as provided in the *NACARA Procedures Manual* for rescission cases.

See Section III(R) on prohibitions on filing.

Although the applicant may file a new asylum application, s/he is subject to the prohibitions on filing for asylum outlined in INA section 208(a)(2)(A), (B) or (C).

i. Submission of a New Asylum Application

At this time, the Service Centers are not equipped to receipt applications where RAPS shows a final disposition of the case. An applicant must, therefore, file directly with the asylum office having jurisdiction over his/her place of residence. Applications received at the Service Center are forwarded to the asylum office for processing.

ii. RAPS Entries

When an applicant files the new I-589, asylum office personnel locate the A-file that contained the previous asylum application. When this occurs, asylum office personnel take the following actions in RAPS:

- Print the CSTA screen that contains the information about the previously-filed asylum application. Place the printout on the right-hand side of the file.
- Delete the information from the previously-filed asylum application from RAPS using the Reinterview (REIN) command. Delete the filing date of the previous application using the Case Correction (CORR) screen, and enter the new filing date.
- If the asylum office that accepts the application is not the same office that adjudicated the previous application, the asylum office that has the new application must contact the asylum office that adjudicated the previous application to delete the information from RAPS, and update the MOVE/TRAN screens.

iii. Interview and Adjudication

A newly-filed I-589 receives a new interview and adjudication by an AO, and the prohibitions on filing are explored during the asylum interview. Prohibitions on filing for

asylum, including the one-year filing deadline and prohibition on filing after a prior denial by EOIR, are discussed below, Section III(R), *Prohibitions on Filing an Asylum Application*. A prior denial by INS does not invoke the prohibition on filing. The AO may consider the interview notes and *Assessment* from the previous application to develop lines of inquiry during the asylum interview. Findings of fact and law made by INS in the prior adjudication should not be disturbed, absent error or a change in circumstances.

D. RAPS ACTIVITY AFTER DATA ENTRY OF I-589

1. Receipt Mailers

Acknowledgment of Receipt mailers are printed in the asylum office the day after the new file data is entered into RAPS. Asylum office personnel mail the mailers within three (3) business days of their printing, and file copies of the mailers in the applicant's file within ten (10) days of their printing, or no later than ten (10) days after receipt of the A-file from the Service Center, whichever is later.

2. File Transfer Requests

RAPS updates CIS and generates a File Transfer Request (FTR) for any case entered as a new application that has an existing A-file in another INS location. This information is automatically printed at the INS location housing the A-file. The FTR requests that the A-file be sent to the asylum office with jurisdiction over the newly filed I-589.

For information on File Transfers see Records Operations Handbook (M-407), chapter 3(A)(2) in INSERTS.

3. Automated Records Checks

a. INS Systems – DACS, NAILS and APSS

Data from RAPS is compared to data in DACS, NAILS and APSS. If the comparison results in a potential match, a "Y" flag appears next to the system name on the CSTA screen.

b. IBIS

Data from RAPS is uploaded to the INS mainframe for assembly of a batch records run in the Interagency Border Inspection System (IBIS). A potential match result is flagged with a "Y" next to the system name on the CSTA screen.

c. CIA and FBI name checks

Every asylum applicant's biographical data are downloaded from RAPS onto a computer tape and that tape is forwarded to the CIA and FBI for security checks. CIA and FBI notify INS if records pertaining to the applicant exist.

See Section III(C) for more information on CIA checks. More information on the FBI name check process is available in section III(L)(4).

4. Fingerprint Scheduling

All asylum applicants aged 14 to 74, who filed for asylum on or after March 12, 1998, are scheduled to submit their fingerprints to INS at an INS-approved fingerprinting site so the FBI may conduct a confidential background investigation. These sites include Application Support Centers (ASC) and designated Law Enforcement Agencies (LEA). RAPS automatically requests the scheduling of a fingerprint appointment:

- Within 3 days of a new case being entered into RAPS, except for circuit ride cases.
- For an applicant living in a circuit ride location, when an interview is scheduled, either via automated scheduling or manual scheduling using the

See Section III(L) for procedures on the identity and security check process.

ADDC command.

- When a dependent is added to RAPS and a "Y" is placed in the "New A-file (Y/N)" field on the I589 screen.

E. A-FILE IS TRANSFERRED TO ASYLUM OFFICE

1. From the Service Center

The Service Center forwards new files to the appropriate asylum office within 21 days of receipt of the complete I-589. The files of family groups are sent rubber-banded together.

2. From Other INS Locations

File Transfer Requests (FTRs) are generated by CIS. Any INS facility holding an A-file that corresponds to asylum application data (entered at the Service Center) should respond to the FTR by sending the A-file to the appropriate asylum office.

F. ASYLUM OFFICE RECEIVES A-FILE

1. Receiving File from Service Center

When an asylum office receives an A-file from the Service Center, asylum office personnel check the file in RAPS (CSTA screen) to verify that it has been sent to the correct asylum office according to the assigned File Control Office (FCO). It is not necessary to confirm receipt of the file in CIS since the Service Center has indicated in CIS that the FCO is the receiving asylum office. However, asylum office personnel must enter the file into RAFACS and keep family groups together.

2. Receiving File from Other INS Locations

When an asylum office receives a pre-existing A-file from another INS location, asylum office personnel take the following actions:

- Update CIS to confirm the asylum office received the file.
- Check RAPS and CIS to ensure it is a file needed for the adjudication of an asylum application.
- Enter the file into RAFACS and see if there is a corresponding T-file or W-file. Physically consolidate any W-file or T-file into the A-file and delete the W-file or T-File from RAFACS, unless the A-file pertains to a Legalization/SAW application. See Section III(B)(9) on Legalization/SAW applications, and Section III(K)(1) on file consolidations of multiple A-numbers.

For procedures regarding file consolidation, see Records Operations Handbook (M-407), chapter 3(C) in INSERTS.

G. ASYLUM OFFICE SCHEDULES INTERVIEW

Entering a case into RAPS creates a pool of cases that are ready to be scheduled for an asylum interview. The asylum office creates a monthly interview calendar and sets scheduling parameters that are determined by the number of AOs that will be available to interview in that month.

1. Asylum Office Creates an Interview Calendar in RAPS

An asylum office creates a monthly interview calendar in RAPS using the Create Daily Calendar (CCAL) command. The number of cases that are scheduled for an interview in any given month depends upon each office's scheduling system that takes into consideration staffing resources and no-show rates. Through the CCAL screen, the

asylum office tells RAPS how many asylum applicants to call-in for an interview by "opening" a certain number of interview slots. The number of slots the asylum office opens is based upon each office's staffing resources.

Once the asylum office creates an interview calendar, it may be viewed by using the Calendar Query (CALQ) command.

2. Cases are Selected for Interview Scheduling

a. Automatic Scheduling

Approximately 22 days before a particular interview day, RAPS fills that day's opened interview slots with cases from the pool that was created when I-589s were entered into the system.

For information on "special group codes," see RAPS Users Manual.

Cases in the pool that are marked with a special group code will not be picked up for scheduling as part of the automatic scheduling system, unless the interview calendar indicates that a particular special group case should be scheduled.

b. Manual Scheduling

Cases may be manually scheduled to available interview days by utilizing the Add Case to Schedule (ADDC) command in RAPS. Reasons for manually scheduling a case may include; the scheduling of an expedited interview for a particular I-589, and a rescheduling of an interview due to lack of available AOs to interview on a given day. When ADDC is used to schedule an interview at a circuit ride location, RAPS will automatically initiate the scheduling of a fingerprint appointment for the applicant.

Before using the ADDC command, asylum office personnel check to see if interview slots have been opened for a particular day by viewing the Calendar Query (CALQ) command.

c. Scheduling Priorities

All cases within the pool are categorized into priorities. RAPS automatically schedules cases in the following order, exhausting each priority listed before scheduling cases from the next priority group:

Priority 1: Reform rescheduled cases.
Priority 2: Reform cases beginning with those aged 21 days and working towards the newer cases (i.e., from 21 days old to 1 day old).
Priority 3: Reform cases that are between 22 and 100 days of receipt, from newest to oldest (i.e., from 22 days old to 100 days old).
Priority 4: Reform cases that are over 100 days from day of receipt, from newest to oldest (i.e., 100 days to 999 days).
Priority 5: Pre-reform rescheduled cases.
Priority 6: Pre-reform cases where the applicant requests an immediate interview and the interview is added to the scheduler through use of the INTERVIEW REQUEST (INTR) command.
Priority 7: Pre-reform cases, starting with the most recently filed and working to the older cases in the backlog from the newest to the oldest.

d. RAPS/CLAIMS Interface for Certain Administratively Closed Cases

The asylum offices administratively closed many pre-reform asylum applications after applicants failed to appear for an interview. Many of the individuals were not placed before the Immigration Court because the asylum office did not have sufficient

information to establish their deportability.

If an applicant in this category files for an extension of his/her Employment Authorization Document (EAD), or any application that is entered into CLAIMS, a CLAIMS/RAPS interface triggers RAPS to reopen the case for interview scheduling. CLAIMS also updates RAPS with the new address. RAPS automatically puts the A-number in the Priority 5 category.

3. Asylum Office Generates and Mails *Interview Notice*

When RAPS fills an open interview slot with a case, the system automatically generates an *Interview Notice*. If an applicant's representative is recorded in RAPS, RAPS generates an identical *Interview Notice* to the representative of record. An *Interview Notice* is printed in the asylum office during the night. Within three (3) business days of the *Notices* being printed and no less than 18 days before the scheduled interview date, asylum office personnel mail the *Interview Notice* to the applicant and any representative of record. Asylum office personnel file the mailers in the applicant's file within twelve (12) days of their printing.

Exceptions to these requirements can be made in particular cases at the discretion of the Director for special circumstances, as long as the applicant receives adequate notice of the interview.

H. ASYLUM OFFICE PULLS FILES FOR INTERVIEW

Each office has its own system for pulling files scheduled for an interview. At a minimum, the system must provide that:

- A-files activated from the file room are assigned to a responsible party in RAFACS in such a way that they are traceable throughout processing of the I-589.
- The A-files of all applicants scheduled for an interview are in the asylum office. If the asylum office cannot locate an A-file by the date of the interview, the staff responsible for distributing A-files on interview days must be informed. An applicant whose A-file is not in the asylum office, and who appears for his/her interview, may not be interviewed unless the applicant has a copy of his or her I-589.
- The EOIR screen is checked prior to the interview to confirm the applicant is not under the jurisdiction of EOIR. Local office policy dictates the timing of the check and the personnel who perform it. The EOIR screen is printed out for all T-files.

See Section III(K) for procedures on interviewing and adjudicating a case using a T-file or a W-file.

I. APPLICANT ARRIVES FOR INTERVIEW

1. IDENT-Asylum

When an asylum applicant appears for the interview, asylum office personnel enroll him/her and all dependents 14 years old and older into the IDENT–Asylum system. Each asylum office has an IDENT coordinator and established local operating procedures that facilitate IDENT–Asylum processing while maintaining an efficient processing of asylum applications.

During the enroll process, IDENT-Asylum checks three databases: *Lookout, Recidivist*, and *Asylum*. The *Lookout* database contains information on the following types of aliens.

- Any alien who has been convicted of an aggravated felony as defined in of the INA § 101(a)(43);
- Any alien who an immigration officer knows or has reason to believe is or has been an illicit trafficker in any controlled substance and who is inadmissible under INA § 212(a)(2)(C);

Check with local asylum office management for procedures on IDENT-Asylum, including how to process a case when an applicant is found in one of the databases.

- Any alien who is inadmissible based on a crime of moral turpitude under INA § 212(a)(2)(A) or (B);
- Any alien who is inadmissible on security and related grounds under INA § 212(a)(3); and
- If an INS officer has reviewed documentation and has determined that an alien does not meet one of the criteria set forth in the previous four bullets, but has determined that the person has committed other offenses of a serious enough nature that an IDENT Lookout is warranted on the individual, the officer may submit a ten-print record in standard format and a photograph to the Biometric Support Center (BSC) for enrollment in the IDENT Lookout database. The submission must be accompanied by a memo addressed to the BSC from the officer's supervisor authorizing inclusion of the record in the IDENT Lookout database. The basis for inclusion of the record in the database must be clearly stated in the supervisor's memo to the BSC. All supporting information and/or documentation for inclusion of the record in the database must be placed in the alien's A-file along with a copy of the memo.

The *Recidivist* database contains records of the following:

- Aliens who have an administratively final order of removal, exclusion or deportation who are not entered into the IDENT Lookout database;
- Aliens who an INS officer determines should be entered based on considerations such as officer safety;
- BSC-identified possible alien smugglers;
- Aliens permitted to withdraw an application for admission in accordance with INA § 235(a)(4); and
- Aliens permitted to voluntarily depart the United Stated in lieu of being subject to proceedings in accordance with INA § 240B.

The *Asylum* database contains the records of asylum applicants entered into IDENT-Asylum by the eight asylum offices since approximately June 1998. In 1999, IDENT-Asylum was deployed to circuit ride locations at Boston, MA and St. Paul, MN. By the end of 2003, IDENT-Asylum should be available at nearly all circuit ride locations.

The applicant is called to enroll his or her prints by number rather than name in the manner dictated by local policy. See below, Section II(I)(6) *AO Calls the Applicant for the Interview.*

2. Interview Assignment Log

As applicants arrive, the IO/CR notes the time of each applicant's arrival by date/time-stamping the *Interview Notice*. As a general rule, cases are assigned on a "first come, first served" basis within the allotted appointment period. Asylum office Directors may set up criteria for exceptions to this general rule. A case assignment log is either created at this time, or noted to indicate an applicant's arrival (depending on whether the cases are pre-assigned). As soon as an SAO becomes aware of an AO's absence, s/he informs asylum office personnel responsible for distributing cases of the AO's unavailability for interviews. If the asylum office pre-assigns cases, the appropriate asylum office personnel reassign the cases of the AO who is absent for the day.

3. Random Assignment

Whether the asylum office pre-assigns cases or assigns them when applicants appear for their interviews, the assignment of a case to an AO is done at random. In offices where cases are not pre-assigned, random assignment may be ensured by use of assignment lists or logs that alternate the order of asylum officers each day. Only an asylum office Director or Deputy Director can make any exceptions to random case assignment. Any attempt by asylum office personnel to improperly influence case assignment is to be immediately reported to the Security Officer (SO).

See Langlois, Joseph E. INS Asylum Division. *Office Security Procedures*, Memorandum to Asylum Offices (Washington, DC: 16 April 1999), 2p.

The IO/CR updates RAPS using the Assignment of Officers to Cases (ASGN) command if the assignment is made prior to the interview day. The IO/CR Updates RAPS using the Modify Officer Assignment (MODA) command if the assignment is made on the day of the interview.

One exception to the policy of random assignment is where an asylum applicant was previously denied asylum, but not placed into removal proceedings, and subsequently re-applies in the same office. In such a case, asylum office personnel will make a reasonable attempt to assign the case to the same officer who made the original decision. If the same asylum officer is unavailable, the case is assigned to another asylum officer supervised by the SAO who reviewed the original decision, or if the SAO is no longer with the office, randomly according to regular office procedures.

An AO may not refuse to interview a particular case, without cause. Under certain limited circumstances, the AO may feel that it is inappropriate to interview a particular applicant. When this occurs, the AO must obtain SAO approval prior to returning the case for assignment to another AO.

Acceptable reasons may include but are not limited to:

- The AO has a prior personal or professional relationship with the applicant, interpreter, or representative of the case.
- The AO determines that the interpreter is inadequate.
- The applicant specifically requests an AO of a different gender. (A female officer for a female rape victim, for example).

Check with local asylum office management for procedures on returning an assigned case.

4. AO Prepares for the Interview

See the AOBTC Basic Training Materials, *Interviewing Part I: Overview of the Nonadversarial Asylum Interview; Interviewing Part III: Eliciting Testimony; Interviewing Part IV: Cross-Cultural Communication;* and *Interviewing Part V: Physical Abuse, Torture and Trauma-Related Conditions*.

5. Delays in Interviewing

An AO begins interviewing the applicant as expeditiously as possible. Asylum office personnel should explain to the applicant any lengthy anticipated delay.

6. AO Calls the Applicant for the Interview

Asylum office directors establish procedures for calling an applicant for the interview by number rather than name, to preserve an applicant's confidentiality in the waiting room.

Langlois, Joseph E. Director, INS Asylum Division. *Institution of Procedures to Call*

Examples of acceptable practices include, but are not limited to, the following:

- When appearing for the interview, applicant is issued one part of a two-part coupon or set of twin tickets with a number printed on both parts. The second part is attached to the file, where it remains until after the decision is served, or a second set of tickets is used on the date of pick-up. Applicant is called using the number on the coupon or ticket.
- Applicant is called using the last three or four digits of the A number. A number is pointed out on appointment mailer or asylum office personnel give principal applicant a piece of paper with the digits to be called.
- Applicant is given a laminated card with a number that is recorded on a master list and written on the appointment mailer for the interviewing officer or the pick-up notice for the IO/CR. Interview numbers start daily at "1"; Pick-up numbers start at "101".

Applicants for Interview, IDENT or Decision Pick-up By Designated Number, Rather than Name, Memorandum to Asylum Office Directors (Washington, DC: 23 February 2001).

7. AO Meets and Greets the Applicant

Prior to calling an applicant for an interview, the AO notes whether the case includes any dependents or a representative of record. When meeting and greeting the principal applicant (P.A.) in the waiting room, the AO accounts for all parties before escorting everyone involved in the case to the AO's office.

The AO must not discuss any aspect of the applicant's case in the waiting room. If confusion arises in the waiting room as to who should be present at the interview, the AO escorts all the parties concerned to a separate area apart from the waiting room to resolve the matter.

8 CFR 208.9

J. AO CONDUCTS AN ASYLUM INTERVIEW

1. Minimum Requirements for an Interview

See the AOBTC Basic Training Materials, *Interviewing Part I: Overview of the Nonadversarial Asylum Interview*.

2. Placing the Applicant Under Oath

The AO places the P.A. and any dependents who will testify on the asylum claim under oath prior to discussing any merits of the asylum claim. The applicant, AO and interpreter, if any, execute a *Record of Applicant and Interpreter Oaths* (Appendix A 1).

3. Dependents

The AO must personally meet each dependent (AKA "derivative") included on a P.A.'s application. It is not necessary for the dependent(s) to be present for the entire interview, and it is often advisable to dismiss minors to the waiting room for the duration of the interview as long as there is an adult who can supervise the children.

Generally, an AO should consult with the P.A. to determine his/her preference before dismissing any dependent. At the AO's discretion, a dependent spouse may be dismissed to the waiting room and/or interviewed separately, but a dependent minor should not be interviewed without his/her parent present.

For procedural guidance on issues involving dependents, see Section III(F).

In addition to personally meeting any dependents included as derivatives on the I-589, the AO verifies the dependent's identity, his/her relationship to the P.A., and ascertains the dependent's date, place, and manner of entry. The AO also ensures the dependent is not

under the jurisdiction of the Immigration Court, and ascertains whether any mandatory bars apply. For guidance on cases where there is evidence that a dependent is subject to a mandatory bar, see Section III(F)(11), Dependents.

4. Interpreters

8 CFR 208.9

a. Placing the Interpreter Under Oath

The AO places the interpreter under oath and has the interpreter sign the *Record of Applicant and Interpreter Oaths* (Appendix A 1). The AO signs the *Record* as a witness.

b. Interpreter's Role

See the AOBTC Basic Training Materials, *Interviewing Part VI: Working with an Interpreter*.

c. Identity

Like asylum applicants, interpreters are not required to present identity documents in order to interpret for an asylum applicant. Regulations give an AO the authority to verify the identity of the interpreter, which is best accomplished through the review of identity documents. However, an AO may not terminate or reschedule an interview if the interpreter is lacking identity documents, or presents identity documents that the AO does not wish to accept. Local asylum office policy dictates whether an AO should photocopy any identity documents of an interpreter, or whether the AO should indicate on the *Record of Applicant and Interpreter Oaths* the type of identity documents, if any, the interpreter provided. AOs must base an individual's ability to interpret on interpretation skills and not on questions of identity.

There may be instances where an AO believes that the issue of an individual's identity is material to his/her ability to interpret. The AO must consult with the SAO in these circumstances. Only the asylum office Director or his/her designee has the authority to dismiss/bar an individual from interpreting in an office.

Check with local asylum office management for any procedures for barring interpreters.

d. Solicitation of Interpreter Services

Solicitation is prohibited on federal property. Asylum offices must take measures to prevent soliciting of or by interpreters in the vicinity of the office.

e. Abuse of the Interpreter's Role

An AO may believe that a particular interpreter is abusing his/her role as an interpreter by engaging in one or more of the following types of conduct:

i. Misrepresentation or Fraud

The interpreter appears to be willfully changing, creating, omitting or otherwise misrepresenting oral testimony of the applicant.

ii. Incompetence

The interpreter is unable to perform the required service due to insufficient language skills. This may involve vocabulary and diction, as well as pronunciation and other accent problems, and applies to both languages used.

iii. Improper Conduct

The interpreter uses abusive or intimidating language or otherwise disrupts the interview process or the front counter procedures. The interpreter is soliciting business on the asylum office premises.

If one or more of these scenarios applies, the AO (if occurring during an interview) or supervisory asylum office personnel (if occurring at the front desk) informs the interpreter of the problem s/he witnessed and asks the interpreter to correct the behavior. If the behavior continues, appropriate asylum office personnel:

- Terminate or cancel the interview.
- Explain to all parties (the applicant, interpreter, and representative) the reason the interview is being terminated or cancelled.
- Explain to all parties that the applicant will be rescheduled only once, and must reappear with a different interpreter who is competent. This rescheduling will stop the EAD clock until the applicant appears for his/her rescheduled interview.

SAO consultation is required before terminating an interview already in progress.

- Complete a *Rescheduling of Asylum Interview – Interpretation Problems* (Appendix A 3), providing the original to the applicant and maintaining a copy in the file. Copies of any identity documents submitted by the interpreter are attached to the file copy of the letter.
- Explain to all parties that a copy of the letter will be submitted to asylum office management, which may result in the interpreter being barred from the office.
-
- Asylum office personnel reschedule the interview in RAPS using the Remove Case from Schedule (REMC) command, indicating the rescheduling is caused by the applicant.

5. Legal Representative

a. Representative Qualifications

An applicant may be represented by:

8 CFR 292.1 outlines the qualifications for a representative.

- An attorney (a member in good standing of the bar);
- A Board of Immigration Appeals (BIA) Accredited Representative;
- A law student or law graduate not yet admitted to the bar (with certain restrictions described at 8 CFR 292.1(a)(2)); or
- A reputable person who fits certain criteria. See 8 CFR 292.1(a)(3).

b. Representative Appearances

A Form G-28, *Notice of Entry or Appearance as Attorney or Representative* must be properly executed. "Properly executed" is defined as follows:

See 8 CFR 292.4

i. For a Form G-28 filed prior to February 10, 1994

Only the representative's signature is required on the form. If the applicant signed the form but the representative did not, the form is not properly executed. In this scenario, INS does not recognize that the applicant is represented.

See 56 FR 61201 and 59 FR 1455-1466 for supplemental information regarding the change in G-28 requirements effective 02/10/94.

ii. For a Form G-28 filed on or after February 10, 1994

The signatures of the applicant and the representative are required on the form. If both signatures are not present, INS does not recognize that the applicant is represented.

If a Form G-28 is not in the file, and the applicant appears with a legal representative, the AO has the representative and the applicant complete and sign a G-28 prior to beginning the interview. This should be done even when the file already contains a Form G-28 executed by a different attorney from the same law firm as the attorney representing the

applicant at the interview.

c. Representative Role

See AOBTC Basic Training Course Materials, *Interviewing Part I: Overview of Nonadversarial Asylum Interview*.

d. Failure of Representative to Attend Interview

If the representative on the G-28 is not present at the interview, the AO should ask the applicant whether s/he is still represented by the individual listed on the G-28.

If the applicant is no longer represented by the individual listed on the G-28, the AO:

- Asks the applicant to sign a brief statement that s/he wishes to withdraw the individual listed on the G-28 from the asylum claim.
- Attaches the signed statement to the G-28 and places the G-28 on the right-hand side of the file.
- Removes the representative from RAPS using the Attorney/VOLAG Search (REPR) screen. To remove the attorney/VOLAG ID, enter the REPR command and the A-number. Then, enter a "Y" in the "Remove (Y/N)" field on the REPR screen and press enter. CHIS will show an action narrative and user ID any time an attorney/VOLAG ID is modified.
- Proceeds with the interview.

If the applicant continues to be represented by the individual listed on the G-28, the AO explains to the applicant that s/he may proceed without the representative, but is not required to do so:

- If the applicant wishes to proceed with the interview, the applicant signs a *Waiver of Presence of Representative During an Asylum Interview* (Appendix A 4).
- If the applicant does not wish to proceed without representation, the AO permits the applicant to reschedule the interview and completes a *Case Reschedule History* (Appendix A 5).
- If the applicant wishes to reschedule the interview, the AO determines whether the failure of the representative to appear could be the fault of INS. The AO ascertains whether the asylum office properly sent notice of the interview to the representative by:
- Questioning the applicant
- Checking to see if the representative is listed in RAPS
- Seeing if a copy of the representative's *Interview Notice* is in the file.

SAO consultation is required before rescheduling an interview.

If a copy of the representative's *Interview Notice* is in the file, the asylum office presumes that INS properly sent notice of the interview to the representative. Therefore, the failure of the representative to appear is not the fault of INS. Asylum office personnel update the Remove Case from Schedule (REMC) command, indicating the rescheduling is caused by the applicant. The 180-day EAD CLOCK is tolled.

If the representative was retained after the *Interview Notice* was issued, INS is not at fault for failing to notify the representative about the scheduled interview date.

If a copy of the representative's *Interview Notice* is **not** in the file, the failure of the representative to appear is the fault of INS. Asylum office personnel update the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the fault of INS. The 180-day CLOCK is not tolled.

e. Abuse of Representative's Role

It is the AO's duty to ensure that the representative follows the rules of the interview as explained at the outset of the interview, which includes turning off all cellular phones or beepers

An AO may be required to consult with an SAO prior to dismissing an

beepers.

attorney from an interview. Check with local asylum office management.

An AO may ask a representative, who continuously fails to abide by the rules after repeated warnings, to leave the interview. If the attorney is asked to leave, the AO either continues with the interview or suspends the interview at the applicant's request. If the interview is suspended, the rescheduling of the appointment is at the fault of the applicant, so the EAD clock stops. The AO must clearly outline in the interview notes what occurred during the interview that prompted the representative's dismissal from the AO's office.

f. Attorney's License to Practice Law

See 8 CFR 292.3

The Immigration Judge, BIA, or Attorney General may suspend or bar from further practice before the EOIR or INS, or may take other appropriate disciplinary action against, an attorney or representative if it is found that it is in the public interest to do so. A formal proceeding to suspend or bar an individual attorney pursuant to 8 CFR 292.3 may occur if s/he is under any order of any court revoking or suspending his/her license to practice law in a particular state, possession, territory, Commonwealth or the District of Columbia. Orders suspending or expelling attorneys are periodically forwarded to the asylum offices, and a list of such attorneys is maintained on the EOIR web site at www.usdoj.gov/eoir.

If the asylum office learns that an attorney who has filed an appearance with the asylum office has been suspended or expelled by EOIR or the Attorney General, the asylum office may not permit the attorney to act as a representative in connection with the interview or other proceeding during the term of the suspension or expulsion. Such an attorney may not act as an interpreter in any case for which he or she has previously filed an appearance (G-28). The representative code is removed from RAPS only when the attorney has been permanently expelled from practice before the INS in accordance with 292.3.

Although 8 CFR 1.1 defines an attorney as someone who is not under any order of any court, suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law, the Office of the General Counsel has advised the Asylum Division that an asylum office cannot ban an attorney from representing asylum applicants, absent a formal proceeding to suspend or bar the individual under 8 CFR 292.3, even if the licensing state, possession, territory, Commonwealth or the District of Columbia has taken such action.

Therefore, if an asylum office becomes aware that an attorney's license has been revoked in a particular state, possession, territory, Commonwealth or the District of Columbia, the asylum office cannot ban that attorney from representing asylum applicants. An asylum office may require the attorney to assert his/her eligibility to act in a representative capacity each time s/he appears at the asylum office.

When an attorney, who the asylum office has learned is no longer licensed to practice law in a particular state, possession, territory, Commonwealth, or the District of Columbia, appears at the asylum office to represent an asylum applicant, an SAO, the Deputy Director or the Director informs the attorney that:

- The asylum office is aware that a particular state, possession, territory, Commonwealth or the District of Columbia revoked his/her license to practice law.
- If s/he is licensed to practice in another state, possession, territory, Commonwealth or the District of Columbia, s/he may complete a new Form G-28 and can list the area where s/he has a license to practice law. Call to the attorney's attention question #1 on the form which states "… and am not under a court or administrative agency order

suspending…"
- The asylum office will report his/her appearance to INS Counsel for appropriate action.

If the attorney completes a Form G-28, the asylum office allows him/her to appear at the interview.

An SAO, Deputy Director, or Director takes the preceding steps each time the same attorney wants to represent an applicant. In addition, the SAO, Deputy Director or Director copies the Form G-28 in the file and any new G-28 the attorney completes, and writes a brief outline of any conversations with the attorney for forwarding to the Regional Counsel. The Regional Counsel's Office may notify EOIR, and the bar within the state, territory, Commonwealth or the District of Columbia that revoked the attorney's license, if appropriate.

6. Witnesses

Pursuant to regulation, an asylum applicant may present witnesses to testify on his/her behalf. There are no restrictions on witnesses with regard to the number of witnesses, age, their own asylum or immigration status, or relationship to the applicant, except that an interpreter of record or the representative of record may not act as a witness.

See 8 CFR 208.9

An AO may not refuse a witness the opportunity to testify; however, an AO may place a reasonable limit on the length and subject matter of a witness's statement(s), and may request a witness's statement in writing.

7. Submission of Documents

The applicant may present documents in support of his/her case during the interview. Documents submitted must be in duplicate, and accompanied by a certified English translation if they are not in English. Documents that do not meet these requirements need not be accepted. If they are accepted without translations, explain to the applicant that translation is required for them to be considered in support of the application. While applicants may submit facsimile or photostatic copies as documentation, they are not given the same weight as an original. No restriction applies to the amount or nature of documentation an applicant may submit; including videotapes, audiotapes and photographs.

See 8 CFR 103.2(b)(3) for requirements on certified translations.

When the applicant presents an original document, the AO copies the document (if copies are not submitted by the applicant), and writes on it, "original seen and returned," signing and dating below the statement.

8. Retention of Applicant's Original Documents in the File

An asylum applicant may submit documentation in support of his or her application that the asylum officer, in consultation with the office's fraud coordinator, may believe is fraudulent or fraudulently obtained or that the applicant admits is fraudulent or fraudulently obtained. When an applicant admits that a document is fraudulent or fraudulently obtained, the asylum officer takes a sworn statement detailing the applicant's admission.

An asylum officer may temporarily retain a document between interview and pick-up in order to have time to consult with an SAO or fraud coordinator, giving the applicant a Form I-72 or equivalent as a receipt and a copy of the document.

With the applicant's permission, an AO may retain a document of questionable authenticity for further analysis, such as forensic examination. Pursuant to guidance from Office of General Counsel, we must have the applicant's permission to retain a document. If the applicant refuses to turn over a document for further analysis, a copy of the

document is made for the file. The AO also prepares a memorandum to the file explaining the circumstances and the reasons the document was suspected to be fraudulent. If the District Counsel deems it necessary (if the case is to be referred), he or she may request that the judge order the applicant to produce the document for review. When appropriate, the AO may take the applicant's refusal to turn over a document for forensic examination into account for purposes of the evidentiary weight assigned to the document.

The SAO reviews the weight accorded the evidence by the asylum officer as a part of the normal review process of the assessment.

For original documents voluntarily submitted by the applicant, forensic examination may take place either at the Forensic Document Laboratory (FDL) or at another INS facility, such as a fraudulent document unit or intelligence unit at a port-of-entry. Submission of a document for analysis should be done only if the AO/SAO believe that the analysis of such a document may affect the outcome of the decision.

See Section II(M)(5) for information on the FDL.

Local asylum office policy determines whether an AO must consult with an SAO or other office personnel, if an AO wants to send a document for analysis. If the AO retains an original document, s/he notes on a Form I-72 or an office equivalent, the name of the document, and the reason why it is being retained. The AO gives the original Form I-72 or office equivalent, as a receipt.

Form Required: I-72 or office equivalent

Given the circumstances of a particular case, an asylum office Director may place a case on "HOLD – AD" while awaiting a report on the analysis of a document. This authority cannot be delegated. Please not that by placing a case on HOLD-AD, the 180-day EAD clock is stopped.

If the FDL finds a document authentic or if no determination of authenticity is made, the asylum office returns the document to the applicant. The asylum office may give the original document to the applicant at the time s/he picks up the decision, or may mail the document to the applicant.

If the asylum office returns the document to the applicant in-person, the applicant should sign on the file copy of the document that s/he received the original. If the asylum office mails the document, it must be sent via certified mail, with a return receipt.

If the FDL determines that a document is fraudulent, the asylum office does not return the document to the applicant. The asylum office sends the applicant a *Retention of Original Documents* letter (Appendix A 6) informing him/her that INS is retaining the document(s). A copy of the letter remains in the file along with the fraudulent document, which is placed in an evidence envelope on the non-record side of the file.

The submission of fraudulent documents by an applicant may affect his/her eligibility for asylum. AOs must be familiar with guidance on this issue that has been provided by headquarters asylum division (HQASM). See Langlois, Joseph E. INS Asylum Division. *Matter of O-D-, Int. Dec 3334* (BIA 1998), Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 29 April 1998), 3 p., and Langlois, Joseph E. INS Asylum Division. *Discovery of fraudulent documents after the asylum interview*, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 27 May 1998), 2 p.

9. Note-taking by the AO During an Asylum Interview

Most interviews will require standard note-taking as outlined in the AOBTC Basic Training Materials, *Interviewing Part II: Note-Taking*; however, HQASM requires notes in sworn statement format under the following circumstances:

- The applicant admits or there are serious reasons to believe he or she is associated

with an organization included on the State Department's list of terrorist organizations.

- The applicant admits or there are serious reasons to believe she or he is involved in terrorist activities.
- The applicant admits or there are serious reasons to believe he or she assisted or otherwise participated in the persecution of others on account of one of the 5 enumerated grounds.
- There are serious reasons for considering an applicant a threat to national security.
- The applicant admits or there are serious reasons to believe he or she was convicted of a crime outside of the U.S. and the file does not contain a record of the conviction.
- The applicant admits or there are serious reasons to believe he or she committed human rights abuses.

The circumstances noted above all relate to mandatory bars to asylum. Because an applicant's admission may be used as a basis to institute deportation or removal proceedings against him/her, or as a basis for INS to detain the applicant, it is crucial for the AO to take notes in a sworn statement format about the mandatory bar.

When an AO determines that an applicant has provided information that pertains to one of the circumstances listed above, the AO begins taking notes in the Q&A format on a new sheet of paper in order to separate them from any notes the AO may have already recorded. Once the AO uses this format, s/he continues to use it until the end of interview, even if the discussion surrounding a possible mandatory bar has concluded. The sworn statement Q&A does not have to be a verbatim account of every comment made during the interview, but it must provide a full and accurate record to the specific questions asked of the applicant and the applicant's specific answers. Each page of the sworn statement should contain the applicant's A-number, the date of the interview and the AO's name.

SAO concurrence may be required before changing the note-taking format to a Q&A format. Check with local asylum office management for requirements.

At the conclusion of the interview, the AO incorporates the Q&A notes into the sworn statement template (Appendix A 64) (manually or electronically) and reviews the sworn statement with the applicant, making any corrections requested by the applicant. The applicant initials the bottom right-hand corner of each page. Both the AO and the applicant print and sign their names below the last recorded answer.

The AO draws a diagonal line from the end of the testimony to the bottom of the page to ensure that no one adds additional comments. If the applicant refuses to sign and/or initial the sworn statement, the AO writes a note to that effect on the last page. The AO prints and signs his/her name and draws a diagonal line from the end of the testimony to the bottom of the page.

10. Applicant Testifies to Fraudulent Entry or Violation of Status

Asylum office personnel may encounter an applicant who was inspected and admitted, and whose authorized period of stay has not expired, but who testifies that s/he gained admission to the U.S. through fraud or that s/he has violated the conditions of his/her status.

Asylum office Directors maintain discretion to establish local policies, in consultation with local Offices of District Counsel, as to note-taking, documentation of the file, whether to treat such an applicant as in- or out-of-status for the purposes of issuing a *NOID*, whether and how a charging document is prepared, and whether consultation with the Director is required in making any of the above determinations. Asylum office Directors establish local policies in accordance with the following priorities:

The taking of a sworn statement is strongly recommended, even if it would not be accepted to sustain a fraud charge in the local jurisdiction. The statement could later serve as evidence for INS to consider in future

applications for immigration benefits.

- A charging document issued by the asylum office will be sustained by the Immigration Court, i.e., proceedings will not be terminated, regardless of whether the alien appears for his/her hearing before the Immigration Judge.
- Charges on an NTA are substantiated, i.e., if fraud is charged, there is sufficient evidence for INS to prevail on that charge before the Immigration Judge.
- The file is documented with a reliable record of the applicant's testimony and copies of evidence in the applicant's possession.
- The asylum application is processed and completed in a timely manner.

Note: An AO may not deem a document fraudulent based solely on his/her judgment and may not confiscate an applicant's documents without his/her consent. See Section II(J)(8), *Retention of Applicant's Original Documents in the File*.

The policy adopted by the asylum office will depend on the treatment of such cases by the local immigration courts and District Counsels, whether the burden to prove a particular charge lies with INS or the applicant, the evidence available to support a particular charge, and the priorities discussed above. Asylum office Directors are encouraged to share their policies and practices with HQASM and each other.

11. Conducting an Interview in a Language other than English

Language certification may be obtained through the Immigration Officer Academy at Glynco.

Each asylum office has a local policy on whether an AO may conduct an asylum interview in a language other than English. If the local policy allows an AO to conduct interviews in a language other than English, the AO must be certified by either INS or Department of State (DOS).

An applicant, who is not fluent in English, is required to bring an interpreter with him/her to the asylum interview. Depending upon local policy and with the asylum applicant's approval, the AO can either conduct the interview in the applicant's language, if the applicant agrees, or use the services of the interpreter. The AO must make a clear notation in the interview notes that the interview was conducted in a language other than English and indicate the language used by the AO. If the AO conducts an interview in the applicant's language, it is preferable that a competent interpreter be present during the interview to monitor the level of understanding between the asylum officer and applicant.

Because 8 CFR 208.9(g) requires an applicant who is not competent in English to bring an interpreter to an asylum interview, as a general rule, asylum applicants are required to bring interpreters regardless of whether there are asylum office personnel available to conduct interviews in languages other than English. Nevertheless, the asylum office Director maintains the discretion to allow qualified asylum office personnel to conduct or assist in the conducting of an interview in the applicant's preferred language, with the applicant's consent, if there are extraordinary circumstances for doing so, such as (but not limited to) the disqualification of an interpreter through no fault of the applicant combined with the applicant's having traveled a very long distance for the interview, etc.

12. Applicants Unable to Testify on their Own Behalf

An asylum applicant may be incapable of testifying on his/her own behalf due to mental incompetence or a physical disability. These include individuals who suffer from acute mental or physical disorders, or have suffered an injury, such as a stroke, that makes them unable to communicate.

Asylum office personnel are neither trained nor expected to evaluate an asylum applicant's mental or physical competency and shall not make any determinations to that

effect. However, there may be cases in which an applicant manifests behavior that leads asylum office personnel to question the applicant's ability to provide competent testimony.

When asylum office personnel become concerned that an applicant is not competent to testify, a supervisory asylum officer must be notified and apprised of the reasons for concern. If the supervisory asylum officer believes that there are reasonable grounds to question the competence of the applicant to provide testimony, asylum office personnel shall explain the procedures in this section to a representative, family member or guardian accompanying the applicant to the asylum office, or to the asylum applicant him or herself, if practicable.

Although the burden of proof is on the applicant to establish his/her eligibility for asylum, a Director may permit another individual to testify on behalf of an applicant who is unable to testify on his/her own behalf as long as certain criteria are met.

a. Criteria and Required Documentation

For another individual to be allowed to testify on behalf of an applicant, the nature of the applicant's condition must be so severe that it rules out the possibility of him/her testifying on his/her behalf at any time in the near future. Additionally, the applicant must be under the care of a physician, psychiatrist or psychologist who certifies in a letter that the applicant is mentally or physically incompetent to be interviewed about his/her asylum application in the near future. Only the asylum office Director may waive the requirement of documentation if extraordinary circumstances warrant. When provided, documentation must include:

- Length of time the physician, psychiatrist or psychologist has been treating the applicant.
- Condition from which the applicant suffers, including any type of medication that is prescribed.
- Long term prognosis of the applicant's mental or physical condition.

Usually, an applicant who suffers from post traumatic stress disorder (PTSD) would not be considered unable to testify on his/her own behalf. Individuals who are seeking medical assistance for PTSD or other mental health conditions may request a postponement of an asylum interview. The request should be made in writing to the attention of the asylum office Director who determines whether the request shall be granted, and how long the interview shall be postponed.

b. Testifying on an Applicant's Behalf

The individual testifying on the applicant's behalf cannot be the representative of record. The individual must have first-hand knowledge of the applicant's asylum claim. There is no requirement that the individual be the applicant's relative, only that s/he possesses sufficient knowledge of the applicant's situation in order to sustain the applicant's burden to establish asylum eligibility.

If no one is available to testify on the applicant's behalf or the above criteria are not satisfied and competent testimony cannot be taken, contact HQASM for guidance on how to proceed.

13. Reinterviews of Asylum Applicants

An asylum office Director maintains the discretion to have an asylum officer reinterview

an asylum applicant. The types of case that are normally reinterviewed include (but are not limited to):

- An applicant who was interviewed prior to the establishment of the asylum corps in April 1991.
- An applicant who was interviewed by an AO who left the asylum office but did not make a decision on the asylum claim prior to departing.
- An applicant who was interviewed by an AO, but the record was not sufficiently developed in order to reach a legally sufficient decision in the case. At the discretion of the Director, either the same AO or another AO interviews the applicant.

If a reinterview occurs, any notes or records of the previous interview remain in the file, on the non-record side. The original assessment may remain in the file, where appropriate, and only at the discretion of the asylum office Director, but must be clearly marked "DRAFT – UNOFFICIAL" on each page. In addition, the file should contain a print-out of the Case Status (CSTA) screen in RAPS marked "DRAFT - UNOFFICIAL," which shows any decision that may have been made prior to the reinterview.

See the ABC/NACARA Procedures Manual for more information on adjudicating ABC cases.

Except for ABC cases, the AO may develop lines of questioning based upon the record of the initial asylum interview, but must create a new record for the reinterview. If the decision of the reinterview differs from the first decision, where appropriate and at the asylum office Director's discretion, the AO's *Assessment* may briefly explain the basis for the change in decision.

14. Discovery of Adverse Information After an Asylum Interview

An AO may discover information after an asylum interview but before writing a decision, which adversely impacts upon the asylum claim. A non-exhaustive list of examples includes:

See Langlois, Joseph E. INS Asylum Division. *Discovery of fraudulent documents after the asylum interview,* Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, D.C.: 27 May 1998), 2 p.

- country conditions information that contradicts a material aspect of the asylum claim,
- results of a forensic or other examination reveal that material documents are fraudulent, or
- review of information in a second A-file of an applicant indicates the applicant may be a national of different country than the one s/he claimed on the asylum application.

In all cases where adverse information is discovered before or during the interview, the AO provides the applicant with the opportunity to explain any discrepancies or inconsistencies during the course of an interview. If discovery of the adverse information occurs after the interview, the AO apprises the applicant of the information either in a *NOID* or a *Referral Notice*, depending on the applicant's status. In compelling cases where testimony was otherwise solid and convincing, an asylum office Director maintains the discretion to reinterview an applicant when adverse information is discovered after the asylum interview. However, a re-interview should take place only in extremely exceptional circumstances.

a. Applicant is Maintaining a Valid Status or Parole is Valid

The applicant is given an opportunity to explain any issues of credibility in a written rebuttal to a *NOID*. The *NOID* must clearly outline the adverse information, including identifying documents that were found fraudulent, and explain how it negatively impacts upon the asylum claim.

b. Applicant is Deportable or Removable

The AO clearly reflects in the *Assessment to Refer* that the applicant did not have an opportunity to rebut the information during the asylum interview. In addition, the AO outlines the adverse information and how it negatively impacts the asylum claim in the credibility section of the *Referral Notice*, including identifying documents that were found fraudulent.

For substantive guidance on how to proceed with fraudulent evidence, see AOBTC Training Materials, *Fraud in the Context of Asylum Adjudications.*

K. AO CONCLUDES AN ASYLUM INTERVIEW

1. I-589 Application

At the conclusion of the interview, the AO:

- Reviews and explains to the applicant any corrections, additions, or changes made to the I-589 and numbers each correction, addition or change.
- Informs the applicant that by signing the I-589, s/he is affirming/swearing that the information on the application is true and correct.

The applicant and the AO then sign and date the record copy(ies) of the I-589, as dictated by local asylum office policy.

See Weiss, Jeffrey. INS Asylum Division. *Form I-589 for the Immigration Court*, Memorandum to Asylum Office Director and Supervisory Asylum Office Directors (Washington, DC: 21 August 1996), 1 p.

2. AO Informs the Applicant About the Next Step in the Process

The AO does not inform the applicant of the decision during the course of the interview, or give any hint, suggestion or any other indication of what the decision will be at the interview's conclusion.

The AO informs the applicant how s/he will be informed of the decision. With the exception of circuit rides, the asylum office generally requires an applicant to return to the office to receive the decision.

Check with local asylum office management to ascertain which cases receive an in-person decision and which cases are served by mail.

a. In-person Service (Personal Service)

The AO gives the applicant a *Pick-Up Notice* (Appendix A 7). Only the P.A. in the case receives the *Pick-Up Notice*; the A-numbers of all the dependents are listed on it. The applicant is informed that s/he and all dependents age 14 and over must appear in person to pick up the decision. The AO informs the applicant that while an interpreter is not required at the pick-up appointment, it is highly recommended, so that the applicant will fully understand the documents s/he is receiving and be able to ask any questions s/he may have.

The P.A. must sign the A-file copy of the *Pick-Up Notice* to evidence his/her receipt of the pick-up requirement. Asylum office personnel inform the P.A. that s/he is signing the *Pick-Up Notice* on behalf of all dependents who are listed on the I-589 and are 14 years old and older. An asylum office Director may exercise his/her discretion and require the P.A. and any dependent 14 years of age or older to sign the A-file copy of the *Pick-Up* Notice.

It is crucial for the P.A. to sign the *Pick-Up Notice* because there are consequences for EAD eligibility for failing to appear on a pick-up date. See Section III(J)(3) for more information.

Local asylum office policy dictates which office employee (e.g. AO or IO) serves the *Pick-up Notice* and whether the individual serving the *Notice* must sign it along with the applicant.

b. Service by Mail

The AO gives the applicant a *Mail-out Notice* (Appendix A 8). This informs the applicant that s/he is not required to return to the office to receive a decision. Only the P.A. in the case receives the *Mail-out Notice*; the A-numbers of all the dependents are listed on it.

The P.A. must sign the A-file copy of the *Mail-out Notice* to evidence that s/he was notified of how the decision will be processed.

c. Dismissing the Applicant

The AO makes sure the applicant clearly understands the next step in the process before dismissing him/her from the office. After the interview is concluded, the AO escorts the applicant out of the office to the waiting room or exit, making sure that the applicant has not left any belongings in the office.

L. AO UPDATES RAPS AND VERIFIES COPY OF I-589 SENT TO DRL/CRA

1. RAPS

Information in RAPS must match the same information on the Form I-589. The following RAPS checks and updates are relevant to completing AO responsibilities for processing the asylum application:

a. CSTA

The Case Status (CSTA) screen is a data display screen. The AO checks the CSTA screen to verify that the information is correct, and checks the CURR OFFICER (Current Officer) field to be sure the case is appropriately assigned to the AO. If it is not, the AO ensures appropriate asylum office personnel correct the data using the Modify Officer Assignment (MODA) command.

The CSTA screen has two pages. Pressing PF1 will show the second page of CSTA, which contains the applicant's current address, date, place, and manner of entry, relationship to the principal applicant, and other useful information. PF2 will return the user to the main CSTA screen. Pressing PF9 from the main CSTA screen will show the CSTA data for a dependent. When a CSTA screen print is required pursuant to instructions in this Manual, the first page is sufficient unless otherwise specified.

b. CHIS

The Case History (CHIS) screen is a data display screen. The AO checks the CHIS screen when needed to see the history of significant RAPS transactions in the case such as the history of fingerprint processing, adding and deletion of dependents, interview scheduling and rescheduling history, employment authorization (I-765) history, holds, changes in the applicant's address, decisions, and corrections to decisions. The CHIS screen maintains a record of the user ID associated with the actions listed. The CHIS screen also includes the same information for dependents, with the A numbers for all dependents associated with the file displayed in the upper center area of the screen. Each action listed in CHIS has a store date (STORE DT) and an event date (EVENT DT) associated with it. The store date is the date the action was entered or uploaded into RAPS, and the event date is the date the action took place or became effective. If no other date is entered, the default date for the event date is the store date. It is useful to note the store date of an action, because the action may have been stored in RAPS some time after the event date.

c. VIST

The Validate Immigration Status (VIST) screen is a data display screen and data update command. The AO updates or corrects the data fields, as necessary. When "Y" is indicated in the "CURRENTLY IN STATUS (Y/N) ?" field, "VALID IN-STATUS" will appear in the upper right area of the CSTA screen. This update is required for in-status cases.

d. EOIR

The EOIR Data Inquiry (EOIR) screen displays data relating to EOIR proceedings including the hearing location, when proceedings were instituted, type of proceedings, asylum processing information, dates and types of decisions, appeal history, EAD clock information, and charges contained in the Notice to Appear (NTA) filed with EOIR. The EOIR screen is two pages. The second page, accessed by pressing PF1, displays the applicant's address with EOIR and the applicant's representative's name and address, if any. Designated asylum office personnel check the EOIR screen before each interview to ensure that the case is not under EOIR jurisdiction.

Explanations of abbreviations of EOIR codes are found in *EOIR Data Field Chart*, Appendix A 2.

e. PUSH

The Pickup Scheduling (PUSH) screen is a data display screen and data update command. The AO checks that the pick-up appointment has been scheduled, where appropriate. The pick-up appointment may be viewed from the CSTA screen or the PUSH screen. If the decision pick-up has not been scheduled and a *Pick-up Notice* was issued to the applicant, the AO ensures the appointment is scheduled by designated asylum office personnel at the appropriate time, using the PUSH command. Once a pick-up date has been entered into RAPS, it may not be removed or changed without the express consent of an SAO. See Section III(V), *Reschedule Requests,* for more information.

f. MOVE and AHIS

The Address Change (MOVE) screen is for data display and data updating. Address History (AHIS) is for data display only. If the applicant has provided a new address, the AO changes the address utilizing the MOVE command. A list of the current and any previous addresses in RAPS can be accessed through the AHIS screen. The addresses are displayed in order, from the most recent to the earliest. The dates of address changes may be viewed in the CHIS screen.

g. I589 Screen

The Case Entry (I589) screen is for data display and data updating of biographical information. The AO checks all of the fields on the I589 screen for accuracy, and modifies as necessary. Any corrections or changes in biographical information such as date of birth, date, place, and manner of entry, gender, religion, or marital status made on the I-589 (including amendments made during the interview) should be entered.

When biographical information is changed in RAPS, AOs follow local procedure to ensure that the information will be updated in CIS by the designated clerical personnel with special update access to CIS.

h. NCHG

Asylum office personnel may correct errors in the applicant's name in the Name Change (NCHG) screen. RAPS generates a weekly report in each asylum office with the A numbers of files that were updated using the NCHG command. Asylum Office Directors dictate local policy to ensure that all name changes are compared to CIS and when

appropriate, that CIS is updated by asylum office personnel with special update access to CIS. The "ALIASES" field in CIS should be updated if appropriate. Use of the NCHG command is documented in the weekly RAPS report, RACNCG00.

The name of an applicant who has only one name is entered into RAPS, CIS or other system as a last name. The following language is entered in the first name field: "No Given Name."

With corroborating documentation and unless there is suspicion of fraud, an asylum officer may use NCHG to change an asylum applicant's name to a married name or maiden name after divorce, or when presented with evidence of a legal name change. Guidance is currently being sought from General Counsel (GENCOU) regarding other applicant-requested name changes. Please contact HQASM Operations for guidance if an applicant requests to change his/her name without evidence of a legal name change.

i. FREQ

The Fingerprint Request (FREQ) command is used to manually request a fingerprinting appointment for an applicant or dependents. RAPS automatically requests the scheduling of a fingerprint appointment:

- Within 3 days of a new case being entered into RAPS, except for circuit ride cases.
- For an applicant living in a circuit ride location, when an interview is scheduled via RAPS automated scheduling or manually using the ADDC command.
- When a dependent is added to RAPS and a "Y" is placed in the "New A-file (Y/N)" field on the I589 screen.

The FREQ command is used when:

- The applicant did not receive the fingerprint notice due to a change in address.
- A dependent is added to RAPS and an "N" is placed in the "New A-file (Y/N)" field on the I589 screen.
- A *Notice of Scheduling of Fingerprint Appointment* (Appendix A 28) letter is issued in connection with procedures for failure to comply with fingerprint processing. See Section III(L)(12).
- More than 60 days have passed since a first "REJECT" response from FBI, and there is no subsequent result in RAPS or FBIQUERY.
- Fingerprint results are more than 15 months old, and current results are required to process the case.
- The applicant filed for asylum prior to March 12, 1998, is found eligible for asylum, and no current (less than 15 months old) fingerprint result is in RAPS.

The FREQ command may be used to cancel an erroneous fingerprint appointment request if it is done the same day. Once the CHIS screen shows "FING REQUEST SENT TO SCHEDULER," it is too late to reverse the scheduling of the fingerprint appointment.

j. REPR

The Attorney/VOLAG Update Screen (REPR) is a data display and data update screen. The main CSTA screen will show an identification number in the "ATTORNEY" field if an attorney or representative has a G-28 on file and has been updated in RAPS. To verify that the correct representative and address are associated with the identification number

displayed or to add a representative to the case, the REPR command is used. This command is required in cases with a G-28 on file to ensure the representative receives proper notice of case processing information.

If the representative's current identification number is not known, an "X" is entered in the "SEARCH/UPDATE DATABASE" field. Pressing the Enter key after entering the X will link the user to the Private Attorney Maintenance System (PAMS). By entering the appropriate three-letter code for the local District office and the representative's last name, the user can search and find the representative's identification number. If the representative's name is found on the list, the AO enters an X to the left of the name and presses enter. The full data entry for the representative identification number will display. If the information is correct, the AO presses enter, which will return the AO to the REPR screen in RAPS at a prompt whether or not to replace the current I-589 representative with the representative selected. A "Y" must be entered and the Enter key pressed to complete the update. Note that PAMS may contain several listings for the same representative. Be sure to select the most current and complete listing. CSTA should be checked again to verify that the representative was entered.

To remove the attorney/VOLAG ID, enter the REPR command and the A-number. Then, enter a "Y" in the "Remove (Y/N)" field on the REPR screen and press enter. CHIS will show an action narrative and user ID any time an attorney/VOLAG ID is modified.

For further information about the REPR command, see the <u>RAPS User's Manual</u>.

2. AO Sends a Copy of I-589 to DRL/CRA, if not Previously Sent

8 CFR 208.11

If RAPS or the Service Center Processing Sheet does not indicate that a copy of the applicant's asylum application has been sent to the DRL/CRA for review, the AO prepares for DRL/CRA one full copy of the application from the file (including applicant-specific supporting documentation). The AO makes sure the A-number of the applicant and the name of the asylum office appear on the front of the application.

Prior to sending the copy to DRL/CRA, asylum office personnel update the BHRHA Advisory Requested/Received (OPIN) screen to indicate the date the case was sent for an opinion. The submissions are sent to DRL/CRA at the following address:

Check with local asylum office management about how submissions are sent to DRL/CRA.

DRL/CRA
Department of State
2201 C St. NW
Rm. 7802
Washington, D.C. 20520

An AO does not need to wait for any DRL/CRA response before making a decision on an asylum claim.

M. AO RESEARCHES A CASE

See the AOBTC Basic Training Materials, *Country Conditions Research and the Resource Information Center (RIC).*

1. The Resource Information Center (RIC)

Instructions for accessing the RIC

The RIC is staffed with AOs and research assistants tasked with assisting AOs in the field

to research particular issues. They have access to a broad range of materials and experts in country conditions. Before submitting a question to RIC, the AO must exhaust the resources available in the office, including checking the RIC Forum on Powerport in case the question has been answered previously.

Forum are located at http://powerport.ins/ric/welcome.htm.

The QA/Trainer coordinates questions between individual AOs and the RIC to avoid duplication. The asylum office keeps a binder in its library that contains each question posed to the RIC and its response. Questions are best sent by cc:Mail (to "Queries RIC"). Wherever possible, questions to RIC should not reference applicants by name, or provide information that could divulge the applicant's identity, so that the information can be applied to future applications without violating an applicant's confidentiality.

2. The State Department (DOS)

The State Department (DOS) can provide assistance with country conditions information through its Office of Country Reports and Asylum Affairs, Bureau of Democracy Human Rights and Labor (DRL/CRA). Requests to the DRL/CRA may be addressed to the appropriate DRL country editor by phone. Asylum offices should not contact DOS country desk officers except when directed to do so by DOS, e.g., for follow-up on an IBIS hit. As with RIC requests, these calls should be coordinated through the QA/Trainer, SAO and/or the in-house resource technician to avoid duplication. When information contained in or pertaining to an asylum application is disclosed to a DOS employee, the INS officer must inform the DOS employee of the confidentiality requirements of 8 CFR 208.6. Confidentiality requirements for asylum applications and the Department of State are discussed in more detail in Cooper, Bo. INS General Counsel. *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information,* Memorandum to Jeffery Weiss, Director, Office of International Affairs (Washington, DC: 21 June 2001), 7 p. *See also* 8 CFR 208.6(b).

3. U.S. Embassies and Consulates Overseas

Under certain (very rare) circumstances, AOs may need to be in touch with US embassies or consulates abroad. This should **not** be done directly. Requests for assistance or information from a U.S. Embassy or Consulate abroad should be coordinated through the QA/Trainer(s) within the asylum office to the HQASM Supervisor, Quality Assurance/Training at (202) 305-2663.

4. Foreign Embassies and Consulates in the U.S.

Under certain (very rare) circumstances, an AO may require information from a foreign embassy or consulate about their regulations or laws (e.g., residency or citizenship laws that bear on the issue of firm resettlement). An AO may contact a foreign embassy or consulate directly under the following conditions:

- The AO has exhausted all country conditions research sources available to him or her, and the relevant information cannot be obtained.
- The AO's supervisor agrees that the information needed is material to the asylum claim and cannot be obtained through any other source.
- The AO will not violate confidentiality provisions of 8 CFR 208.6. *See* III(D), *Confidentiality Issues*.

See also Cooper, Bo. INS General Counsel. *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*, Memorandum to Jeffrey Weiss, Office of International Affairs. (Washington, DC: 21 June 2001), 7 p.

5. Forensics Document Laboratory (FDL)

The Forensic Document Laboratory (FDL) provides forensic science analyses of documents that are submitted by various units within INS. Information about FDL, the services it provides, and the policies and procedures for submitting documents, may be found via the *FDL Bulletin Board* in the cc:Mail system.

Due to time constraints and FDL's policy of prioritizing the analysis of documents pertaining to detained and criminal aliens over cases submitted by an asylum office, submission of documents to the FDL should be done only if the AO or SAO believes that the analysis may impact on the outcome of the decision.

6. INTERPOL

An asylum office may become aware that INTERPOL contains information about a particular asylum applicant. An asylum office may not contact INTERPOL directly. Requests for investigative assistance from the INS representative to INTERPOL should be coordinated through the QA/Trainer(s) or Fraud Coordinator within the asylum office to HQASM at (202) 305-2663.

7. Federal Law Enforcement Agencies

An asylum officer may become aware that other federal law enforcement agencies (FLEAs), such as FBI or DEA, possess information about an asylum applicant. Asylum Officers may not contact FLEAs directly until after consulting with his or her SAO. Asylum Office directors maintain discretion to establish procedures for contacting FLEAs. Disclosure of case information to FLEAs is covered under *Confidentiality Issues*, below.

N. AO PREPARES A DECISION

Once the AO completes the interview, s/he prepares the decision. The AO writes an *Assessment* or *NOID* in every interviewed case adjudicated by the asylum office. Local office policy dictates whether an individual other than an AO prepares a decision letter, NTA, I-94 card, etc.

This section lists the possible decisions that an AO may reach, and the documents that must be prepared to support that decision.

The instructions on which documents to prepare presume that the immigration status of the P.A. and all dependents are the same. If a dependent's immigration status is different from the P.A.'s status, the P.A. may receive different documents than those listed in this section. These are referred to as "Split Decisions." An outline of how to process a split decision may be found in Section III(F)(9).

1. Applicant Appears Eligible for Asylum

The asylum office grants asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the INA and is not barred from relief under section 208(a)(2) or 208(b)(2) of the INA. The status of an applicant's identity and security check determines whether an applicant receives either a *Recommended Approval* letter, an *Asylum Approval* letter, or, in the case of an applicant who is granted asylum based solely upon coercive family planning practices (CFP), a *Conditional Grant* letter. 8 CFR 208.14(b)

a. Recommended Approval

The asylum office issues a recommended approval when (1) results of identity and

security checks for the P.A. and all dependent family members who require them are incomplete, or (2) when the AO has only a W-file or T-file.

The following is an outline of the documents, and the Form I-589 and RAPS updates associated with a recommended approval. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To …*" of this Manual.

- *Assessment to Grant* (Appendix A 44)
- *Recommended Approval letter* (Appendix A 47 or 48)
- *RAPS* – PDEC of GR
  - When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference).
  - If the claim is based solely on coercive family planning (CFP) policies, place an "X" only next to "CFP;" however, if there is a ground in addition to CFP, place an "X" next to "CFP" and the other ground, so the case may proceed to final approval without a CFP final approval authorization number.
- *I-589* – "FOR INS USE ONLY" section. If the form does not contain a space for a recommended approval, asylum office personnel write "recommended approval," the asylum officer ID number (e.g., ZMI166), and the date of the decision.
- *RAPS* – DINT for service of decision letter

b. Conditional Grant

The asylum approval issues a conditional grant when the asylum claim is based **solely** on coercive family planning (CFP) practices, the results of all required identity and security checks for the P.A. and all dependent family members are current and complete and allow for an approval, and a CFP Authorization Number is not available.

See Section III(B)(4) on CFP cases.

The following is an outline of the documents, and the Form I-589 and RAPS updates associated with a conditional grant. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this Manual.

- Assessment to Grant (Appendix A 44)
- Conditional Grant letter (Appendix A 11)
- *Asylum and NACARA § 203 Background Identity and Security Checklist*
- RAPS – PDEC of GC
  - When updating "basis of the claim" section, place an "X" next to "CFP" only. If another ground applies, the case is not properly a conditional grant and should proceed to final approval.
- *I-589* - "FOR INS USE ONLY" section. Asylum office personnel write in the decision area "conditional grant," the asylum officer ID number, and the date of the decision.

c. Asylum Approval

The asylum office issues an asylum approval when: (1) results of all required identity and security checks for the P.A. and all dependent family members are current and complete and allow for an approval and (2) the case is not granted solely on CFP or the asylum office has received a CFP final approval authorization number for a case that is granted solely on CFP.

For more information on CFP, see Section III(B)(4).

The following is an outline of the documents, and the Form I-589 and RAPS updates associated with an asylum approval. Detailed instructions on how to prepare the

documents can be found in Section IV, "*How To…*" of this Manual.

- *Assessment to Grant* (Appendix A 44)
- *Asylum Approval* letter (Appendix A 16, A 49, or A 50)
- *I-94 card*
- *Asylum and NACARA § 203 Background Identity and Security Checklist*
- *RAPS* – FDEC of G1
- When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference).
    - If the claim is being granted after a conditional grant based solely on coercive family planning (CFP) policies, place an "X" next to the CFP ground only.
- *I-589* - "FOR INS USE ONLY" section. Asylum office personnel complete the appropriate area(s) of this section, indicating a final approval, date, and asylum officer ID number.
- *RAPS* – GLET for service of decision letter

2. Applicant Appears Ineligible for Asylum

8 CFR 208.14(c)

a. Asylum Office Authority to Issue Decisions to Applicants who Appear Ineligible for Asylum

The asylum office's authority to issue decisions to individuals who are found ineligible for asylum is defined by regulation. Because the authority of the asylum office varies depending on the individual's status, the type of decision prepared depends on the status of the individual at the time the decision is *issued* (mailed or personally served), not at the time of decision preparation or interview, if there is a difference.

Asylum office Directors maintain the discretion to establish the most efficient workflow for the processing of decisions for individuals who are appear ineligible for asylum provided that:

- the type of decision is appropriate under the regulations at the time it is *issued*; and
- In the absence of exceptional circumstances, asylum applications are processed in a manner consistent with established timeliness requirements and without unreasonable delay.

See Section III(Q) for special procedures governing parolees.

b. Referral

The asylum office must refer to the Immigration Court for adjudication in removal proceedings an applicant who is ineligible to apply for or be granted asylum and appears inadmissible or deportable at the time the decision is issued.

The following is an outline of the document, and RAPS updates associated with a referral. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this Manual.

Check with local asylum office management about requirements for preparing Form I-213.

- Assessment to Refer (Appendix A 46)
- Form I-213, Record of Deportable/Inadmissible Alien, if required
- Form I-862, Notice to Appear (NTA) or Form I-863, Notice of Referral to Immigration Judge
- Referral Notice (Appendices A 51-55)
- *Asylum and NACARA § 203 Background Identity and Security Checklist*

- RAPS – FDEC of I1-I7, with a deport code of A1 if an NTA is to be issued, A5 if an I-863 is to be issued
  - When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference). The RAPS screen allows entry of "NO," for no nexus if applicant failed to establish nexus to one of the five protected grounds.
- RAPS – OSCG and OSCP screen to generate an NTA and Form I-213, if required
- I-589 - "FOR INS USE ONLY" section. If the form does not contain a space for a referral, asylum office personnel write "referral," the asylum officer ID number, and the date of the decision.
- *RAPS* – OSSE for service of decision letter.

c. Notice of Intent to Deny

The asylum office issues a denial of asylum to an applicant who is ineligible to apply for or be granted asylum and is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status ("in-status") at the time the decision on the application is issued. Prior to denial, the asylum office issues an in-status applicant a *Notice of Intent to Deny (NOID)* (Appendix A 45), providing him or her 10 days, plus 6 days for mailing (a total of 16 days), to rebut the reasons for the denial. Any rebuttal is considered prior to making a final decision in the case. An applicant found eligible for asylum after the rebuttal period is processed for approval as indicated above in this section. An applicant found ineligible for asylum is processed as a denial or referral, as described in this section.

From time to time, asylum office personnel will encounter an applicant who nears and reaches the end of his or her period of authorized stay during the processing of the asylum application. As indicated in subsection (2)(a) of this section, an asylum office Director maintains the discretion to establish procedures to ensure that the appropriate decision is prepared based on the applicant's status at the time the decision is issued, without undue delay.

For discussion of extensions of periods of nonimmigrant status, see section III(H).

The following is an outline of the documents and RAPS updates associated with a *NOID*. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this Manual.

- *Notice of Intent to Deny (NOID)* (Appendix A 45)
- *RAPS* – "Y" and expiration date entered in VIST
- *RAPS* – PDEC of D1-D7, deportation code A6.
  - When updating the "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference). The RAPS screen allows entry of "NO," for no nexus if applicant failed to establish nexus to one of the five protected grounds.
- *I-589* – "FOR INS USE ONLY" section. Asylum office personnel write "NOID," the asylum officer ID number, and the date of the decision.
- *RAPS* – DINT for service of the *NOID*, RBUT for receipt of any rebuttal.

d. Denial

After a *NOID* and rebuttal period, the asylum office denies asylum to an applicant who is ineligible to apply for or be granted asylum and is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status or has valid parole at the time the decision on the application is issued.

8 CFR 208.14(c)

The following is an outline of the documents, and the Form I-589 and RAPS updates

associated with a denial. Detailed instructions on how to prepare the documents can be found in Section IV, "*How To…*" of this Manual.

- *Final Denial* (Appendices A 56 – A 58)
- *Asylum and NACARA § 203 Background Identity and Security Checklist*
- *RAPS* – "Y" entered in VIST
- *RAPS* – FDEC of D1-D7, deportation code A6.
  - When updating "basis of the claim" section, enter the basis upon which the case is decided, rather than basis claimed by the applicant (if there is a difference). The RAPS screen allows entry of "NO," for no nexus if applicant failed to establish nexus to one of the five protected grounds.
- *I-589* - "FOR INS USE ONLY" section. If required by local asylum office policy, the AO completes the appropriate area(s) of this section, indicating a denial.
- *RAPS* –DENY for service of decision letter.

O. SAO REVIEWS FILE

1. Case Review Checklist

Before a decision letter is served, the SAO reviews each case for procedural and substantive correctness and completeness, which includes the following:

SAOs must review the cases for completeness and correctness as outlined in the Procedures Manual and Appendices and the various lesson plans of the AOBTC Basic Training Materials.

- The applicant and the AO signed the I-589, and corrections have been made accurately and clearly.
- Assessment is clear, concise, complete, and correct.
- AO's notes contain the proper elements as described in the AOBTC Lesson Plan, *Interviewing Part II – Note-taking*.
- Decision Letter (e.g. *Referral Notice*, etc…) is correctly addressed to the applicant and any representative of record, accurately reflects the status of the case and lists all dependents.
- Address on the documents matches the address in RAPS.
- Information and dates are correct and consistent throughout (NTA, I-213, assessment, I-589, I-94).
- The AO signed the Form I-213, if required.
- NTA allegations/charges and the location of the Immigration Court are correct.
- Any *Record of Oath* is properly executed.
- *Asylum and NACARA § 203 Background Identity and Security Checklist* is present completed in accordance with the decision being issued.
- Each A-file is in neat, record order, with no loose papers or unconsolidated folders attached.
- RAPS is properly updated.
- Copies of the relevant documents are in the dependent's A-file.

See Section III(K)(4) on record order.

2. Signature on Documents

An SAO's signature on a document evidences that s/he reviewed the case in accordance with the instructions in the previous section, and concurs in the decision that was made by the AO. After reviewing the asylum decision, the SAO takes the following action:

- Signs or initials the *Assessment*, or a flowchart indicating supervisory review.
- Signs the *Referral Notice*, *Recommended Approval* letter, *Asylum Approval* letter, *Conditional Grant* letter, NOID, or *Final Denial* letter.

- Signs and dates each NTA, if required.
- Signs Form I-213, if required.
- Signs and dates the *Asylum and NACARA § 203 Background Identity and Security Checklist.*

3. Standard of Review

It is **not** the role of the SAO to ensure that the AO decided the case as s/he would have decided it. AOs must be given substantial deference once it has been established that the analysis is legally sufficient.

See Melville, Rosemary Langley. INS Asylum Division. *Procedures for Supervisory Asylum Officers and Asylum Officers*, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 30 June 1995), 1 p.

In the event that the SAO disagrees with the AO's decision, s/he discusses the case with the AO. If the SAO and AO are not able to resolve their differences, the SAO elevates the issue to the Director (or Deputy Director) of the Office. The Director may decide, in his or her discretion, to refer the case to Headquarters Quality Assurance Branch (HQASM/QA) for further review.

P. ASYLUM OFFICE PREPARES THE DECISION FOR SERVICE ON THE APPLICANT

Once the SAO has reviewed the case, asylum office personnel prepare the case for service of the decision on the applicant and representative of record, if any, according to local asylum office procedures. An applicant's file must contain copies of any documents served on him/her by the asylum office.

Q. ASYLUM OFFICE SERVES THE DECISION ON THE APPLICANT

For all in-person service of decisions, local asylum office policy dictates whether asylum office personnel verify the identity of an applicant and all dependent family members 14 years old and older in IDENT-Asylum. If an applicant was not enrolled into IDENT-Asylum at the time of the interview and the decision is served in person, asylum office personnel enroll him or her into IDENT-Asylum at the time of decision service.

Applicants are called to receive the decision by number, rather than name, in a manner dictated by local policy. *See above* Section II(I)(6), *AO Calls the Applicant for the Interview.*

The P.A. receives service of the documents for the entire family, except that an NTA must be served on the dependent if s/he is at least 14 years old. Asylum office personnel may serve an NTA to the P.A. for any dependent who is less than 14 years old. **Before personally serving a document on an applicant, asylum office personnel must ask the applicant to review the document served, particularly the I-94 (if issued), to ensure biographical data is correct (e.g., spelling of the applicant's name and date of birth).**

See 8 CFR 292.5(a) for information about service upon attorney or representative of record.

A representative of record is entitled to copies of the decision the asylum office serves on the applicant, so if the representative does not appear for an in-person service, the asylum office must mail him/her copies of the decision.

At the time of service, asylum personnel date stamp the decision letter. If the asylum office serves the decision by mail, the date stamp should correspond to the date of actual mailing.

Depending upon the decision that was reached in the case, the applicant receives one (1) of the following sets of documents:

1. Recommended Approval

Decision documents:

- **Original Recommended Approval letter**
- **AR-11, *Alien Change of Address***

If the asylum office serves the decision **in-person**, asylum office personnel:

- Place the date of service on the *Recommended Approval* letter.
- Inform the applicant that a final approval of asylum may not be issued until the office receives results of the mandatory confidential background check.
- Inform the applicant of the requirement to notify INS of any change in address on the AR-11 within 10 days of such change, sending one copy to the address on the AR-11 and another to the asylum office.
- Ask the P.A. to sign the file copy as proof of service.

If the asylum office serves the decision **by mail**, asylum office personnel:

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

- Place the date of service on the letter the *Recommended Approval* letter.
- Serve the *Recommended Approval* letter and AR-11 by regular or certified mail, as dictated by local asylum office policy.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, asylum office personnel update the NOID/ Rec. Approval Sent (DINT) screen, indicating the type of letter ("R" for recommended approval) that was served, and the date and type of service.

2. Conditional Grant

Decision documents:

- **Original *Conditional Grant* letter**
- **AR-11, *Alien Change of Address***
- ***Asylum and NACARA § 203 Background Identity and Security Checklist***

If the asylum office serves the decision **in-person**, asylum office personnel:

- Place the date of service on the *Conditional Grant* letter.
- Inform the applicant of the requirement to notify INS of any change in address on the AR-11 within 10 days of such change, sending one copy to the address on the AR-11 and another to the asylum office.
- Ask the P.A. to sign the file copy as proof of service.
- Inform the applicant that the waiting period for a final asylum approval may be several years. Explain that the *Conditional Grant* letter has more information about the process.

If the asylum office serves the decision **by mail**, asylum office personnel:

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

- Place the date of service on the letter the *Conditional Grant* letter.
- Serve the *Conditional Grant* letter and AR-11 by regular or certified mail, as dictated by local asylum office policy.

3. Asylum Approval

Decision documents:

- **Original *Asylum Approval* letter**
- **Original *I-94* card, for P.A. and each dependent properly included as a derivative**
- **AR-11, *Alien Change of Address***
- ***Asylum and NACARA § 203 Background Identity and Security Checklist***

If the asylum office serves the decision **in-person**, asylum office personnel:

- Place the date of service on the *Asylum Approval* letter.
- Inform the applicant to notify INS of any change in address on the AR-11 within 10 days of such change.
- Ask the P.A. to sign the A-file copy as proof of service.

If the asylum office serves the decision **by mail**, asylum office personnel:

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

- Place the date of service on the *Asylum Approval* letter.
- Serve the *Asylum Approval* letter, all *I-94* cards, and the AR-11 either by regular or certified mail, as dictated by local asylum office policy.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, asylum office personnel update the Grant Letter Served/Sent (GLET) screen, indicating the date and type of service.

4. Referral

Decision documents:

- ***Referral Notice***
- **NTA -- copy of original NTA that was signed by SAO or one of several original NTAs that were signed by an SAO**
- **Legal Service List**
- **EOIR–33: Change of Address Form**
- **AR-11, *Alien Change of Address***
- ***Asylum and NACARA § 203 Background Identity and Security Checklist***

Each individual 14 years of age and older must receive an NTA, Legal Services List and an EOIR-33 Change of Address Form.

The Immigration Court must receive an NTA with the original signature of an SAO. Local asylum office policy dictates whether asylum office personnel copy an NTA with the original signature, or have an SAO sign multiple NTAs. Whatever policy is instituted, the asylum office must ensure that the Immigration Court receives an NTA with an SAO's original signature, otherwise an immigration judge may terminate the case.

If the asylum office serves the decision **in-person**, asylum office personnel:

- Ask each individual at least 14 years of age to sign his/her NTA.
- Ask the P.A. to sign the NTA for any dependent under the age of 14.
- Place the date of service on the *Referral Notice.*
- Fully and correctly complete the certificate of service section on the NTA, indicating that the document was personally served.

In serving the decision, asylum office personnel inform the applicant:

- Of the date and location of hearing.
- That failure to appear for the hearing can result in the judge's entering a removal order *in absentia*, which could mean that the applicant could be detained or removed without a further hearing.
- That the applicant is required to notify the INS of a change of address on the AR-11 within 10 days of such change and that the applicant is also required to notify the immigration court of any change of address on the EOIR 33 within 5 days.

If the asylum office serves the decision **by mail**, asylum office personnel:

"Date of service" refers to the date that the notice is placed in an envelope and put in the out-going mail.

- Place the date of service on the *Referral Notice*.
- Fully and correctly complete the certificate of service section on the NTA, indicating the type of mail (certified or regular) that was used to serve the document.
- Serve the referral documents by either regular or certified mail, as dictated by local asylum office policy.

Local asylum office policy as to whether NTAs are mailed by regular or certified mail must take into account differing interpretations of "proof of service" by local immigration courts. In cases where the applicant fails to appear for the removal hearing, some courts have held that when an NTA has been mailed by certified mail, the INS has a greater burden to establish proof of service before an *in absentia* order will be entered. See Langlois, Joseph E. Asylum Division. *Service of Notices to Appear by Mail*, Memorandum to Asylum Office Directors (Washington DC: 9 March 1998), 2 p.

For both methods of service (in-person by mail), no more than two (2) business days after the decision is served, asylum office personnel update the OSC Served/Sent (OSSE) command, indicating the date and type of service of the NTA.

5. Notice of Intent to Deny

Decision document:
- ***NOID***

The letter provides an applicant a sixteen-day (16) period before a rebuttal is due. The actual time allotted is the ten days to prepare the rebuttal, plus three days on either end (16 days total) for the mail to be delivered. The rebuttal is considered timely if received on the next business day if the last day of the rebuttal period is a weekend or holiday. *See* 8 CFR 1.1(h).

If the asylum office serves the decision **in-person**, asylum office personnel:

- Place the date of service on the *NOID*. This date is when the 16-day period begins even though the decision is not mailed.
- Ask the applicant to sign the file copy as proof of service.
- Inform the applicant to notify INS of any change in address.

If the asylum office serves the decision **by mail**, asylum office personnel:

"Date of service" refers to the date that the letter is placed in an envelope and put in the out-going mail.

- Place the date of service on the *NOID,* as this begins the 16-day rebuttal period.
- Serve the *NOID* by either regular or certified mail, as dictated by local asylum office policy.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, asylum office personnel update the NOID/ Rec. Approval Sent (DINT) screen, indicating the type of letter ("N" for *NOID*) that was served, and the date

and type of service.

6. Denial

Decision document:

- ***Final Denial***
- **AR-11,** ***Alien Change of Address***
- ***Asylum and NACARA § 203 Background Identity and Security Checklist***

If the asylum office serves the decision **in-person**, asylum office personnel:

- Place the date of service on the *Final Denial*.
- Ask the applicant to sign the file copy as proof of service.
- Inform the applicant to notify INS of any change in address.

If the asylum office serves the decision **by mail**, asylum office personnel:

- Place the date of service on the *Final Denial*.
- Serve the *Final Denial* by either regular or certified mail, as dictated by local asylum office policy.

For both methods of service (in-person or by mail), no more than two (2) business days after the decision is served, asylum office personnel update the DENY screen in RAPS.

R. POST-SERVICE PROCESSING

1. Recommended Approval

Asylum office directors establish local procedures for tracking recommended approvals pending the results of identity and security checks, identifying cases that are ready for final approval, and conducting follow-up on cases where the security or identity checks turn up results requiring further research.

When the identity and security checks have been completed for the principal applicant and all dependents, if the results allow for an asylum approval, asylum office personnel prepare the case as an asylum approval, except for a case based solely on CFP practices, which receives a *Conditional Grant*.

If the asylum office receives an IDENT or REJECT response or a fingerprinting requirement has been waived, follow instructions in Section III(L)(7).

2. Conditional Grant

After a conditional grant is served, asylum personnel take the following action:

- Ensure the file(s) contain a copy of the *Conditional Grant* letter.
- Maintain the file(s) in the asylum office until a CPF Authorization Number is available.
- Refer to Section III(B)(4) for information on how to process a CFP case after the asylum office receives a CFP Authorization Number.

3. Asylum Approval

After an asylum approval is served, asylum personnel take the following action:

- Ensure each file (principal and all dependents) contain a copy of the *Asylum Approval*

letter and corresponding I-94.
- Transfer the file to the National Records Center (NRC) for storage.
- Transfer the file in CIS and update RAFACS to indicate that the file is no longer in the possession of the asylum office.

4. Referral

After the asylum office serves a referral on an applicant, asylum office personnel prepare the case for EOIR and the Office of the District Counsel (ODC) so the hearing can take place on the appointed date and time.

a. EOIR

The asylum office prepares a packet to file with the Immigration Court. Once this packet has been filed with the court, the asylum office no longer has jurisdiction over the asylum claim. 8 CFR 208.2(b). If this packet is not properly filed with the court and served on the applicant, the court may terminate proceedings for failure to prosecute. Such a case may be sent back to the asylum office for issuance of a new NTA. Directors should consult with the Offices of the District Counsel on procedures for handling these types of cases.

The packet sent to EOIR contains the following documents:

See Weiss, Jeffrey. INS Asylum Division. *Form I-589 for the Immigration Court*, Memorandum to Asylum Office Directors and Supervisory Asylum Officers. (Washington, D.C.: 21 August 1996), 1 p.

- Photocopy of the I-589 that contains signatures of the applicant and asylum officer and reflects changes made by the asylum officer during the interview. EOIR is not given the original I-589 with the original signatures unless the AO prepared and signed two I-589s.
- Copies of all documents in support of the I-589 Application. This includes but is not limited to country conditions information and documents submitted at any time in connection with the asylum application.
- NTA, with the original signature of the INS Officer who signed and dated the document on page 1.
- Printout of the Removal screen from ANSIR showing the hearing date, time and location, and the KLOK screen in RAPS.

b. Office of District Counsel

The asylum office also prepares the file for the ODC by taking the actions described in the bullets below. Asylum office Directors coordinate with the ODC for procedures to flag persecutor and terrorist cases for special attention or assignment.

- Ensure the file contains a copy of the NTA, *Referral Notice*, and marked-up I-589.
- Transfer the file to the ODC that has jurisdiction over the Immigration Court where the hearing will take place.
- Transfer the file in CIS and update RAFACS to indicate that the file is no longer in the possession of the asylum office.

5. Notice of Intent to Deny

Asylum office directors establish a procedure for tracking files pending rebuttals to Notices of Intent to Deny to ensure that rebuttals are filed in the file and forwarded to the AO for review and that cases with no rebuttal are processed for a final decision.

After a *NOID* is served, a final decision may not be made until a rebuttal is received or the rebuttal period expires, whichever occurs first. If the applicant submits a rebuttal, asylum office personnel update the Rebuttal Received (RBUT) screen in RAPS. The AO verifies

that RAPS has been updated properly with respect to the rebuttal, considers the information, and makes a decision on the case.

a. Applicant Fails to Submit a Rebuttal or Rebuttal Does not Overcome the Reasons for Denial

The AO finalizes the decision that the applicant is not eligible for asylum status. The type of decision documents the AO prepares depends upon the applicant's immigration status. See Section II(N)(2), above, for guidance on which type of decision is prepared.

b. Rebuttal Overcomes Reasons for Denial

If the rebuttal overcomes the reasons for denial, and the applicant has established eligibility for asylum, the AO prepares a short memo to the file indicating the reasons for the decision. This memo replaces the need to prepare an *Assessment to Grant*. See Section II(N)(1), above, for guidance on which type of decision is prepared.

III. EXPANDED TOPICS

A. ADDRESS CHANGES

1. Applicant's Obligation to Notify INS of a Change of Address

Aliens must notify the INS of a change of address on Form AR-11, *Alien Change of Address,* within 10 days of such change, to the address given on the form. The applicant should also separately notify the asylum office if the applicant changes his/her address at any time during the pendency of an affirmative asylum claim. Notice of such change of address to the asylum office may take any of the following forms: 8 CFR 265.1

- Submission of an original or photocopied Form AR-11, *Alien Change Of Address*
- Written notice in letter form
- In-person notification to an IO/CR, documented in writing in the file and signed by the applicant.
- In-person notification to an AO during an asylum interview

2. Recording Change of Address

If the applicant sends the notice of change of address to an INS office other than an asylum office, that office forwards the change of address to the asylum office that has the physical file. Except as indicated in sections (2)(a) (*Change of Address Received on Interview Day)* and (2)(b) (*Change of Address Received After the Interview but Before Service of Decision)* below, a notice of change of address is processed as follows:

Asylum office personnel update RAPS with the notice of change of address within two (2) business days of its receipt, and file it in the file within ten (10) days of receipt. To update RAPS asylum office personnel:

- Check the Case History (CHIS) and Address History (AHIS) screens to see whether the address change is the most current. If it is **not** the most current, do not change the address in RAPS and route the correspondence to the file.
- **If there is no future interview date,** update the new address as indicated on the Address Change (MOVE) screen. Enter the effective date of the new address, which is the date the notice was dated by the applicant. If the applicant did not date the

notice, use the date that the asylum office received the notice. If the new address falls under the jurisdiction of the same asylum office, route the correspondence to the file after updating RAPS, or schedule the applicant for an asylum interview using the Add Case (ADDC) command, depending upon local asylum office policy. If the address of the applicant falls under the jurisdiction of a different interview location, RAPS will prompt the user to transfer the case on the TRAN screen. Transfer the case in RAPS and, if necessary, transfer the A-file.

- **If there is a future interview date and an interview mailer has been sent notifying the applicant of an upcoming interview date,** follow the procedures in section (2)(a) (*Change of Address Received on the Interview Day)*, starting at the second paragraph.
- **If there is a future interview date but no mailer has been sent**, cancel the interview (indicating the cancellation was caused by the applicant), update MOVE in RAPS and transfer the case to the asylum office having jurisdiction over the applicant's residence.
- **If the applicant failed to appear for a prior interview,** route the change of address to asylum office personnel who process no-show applications.

a. Change of Address Received on the Interview Day

An applicant may notify an IO/CR or an AO of a change of address when s/he appears at the asylum office for the interview. If the applicant's new address remains within the jurisdiction of the asylum office that issued the *Interview Notice*, asylum office personnel update the Address Change (MOVE) screen in RAPS, using the day of the interview as the effective date of the change. An AO may proceed with the asylum interview.

If the applicant's new address falls under the jurisdiction of another asylum office, in most cases the applicant is not interviewed in the asylum office that issued the *Interview Notice* and the case is transferred to the asylum office having jurisdiction over the applicant's residence. Asylum office directors maintain discretion to establish criteria for determining which interviews will go forward and which will be cancelled for transfer of the file to the new asylum office having jurisdiction over the applicant's new residence. If the interview is to be cancelled for transfer to the asylum office having jurisdiction over the applicant's new address, asylum office personnel take the following steps:

- If the applicant is present, ask the applicant to complete and sign a *Case Reschedule History* (Appendix A 5).
- Cancel the interview using the Remove Case from Schedule (REMC) command indicating the rescheduling is caused by the applicant.
- Utilizing the MOVE screen, type in the new address, transferring the case on the TRAN screen if appropriate.

b. Change of Address Received After the Interview but Before Service of Decision

Asylum office personnel give the notice of the change of address to the AO or SAO processing the case, who checks the date the applicant submitted the notice. If the notice was submitted prior to the interview, the case is processed using the address that was verified by the applicant on the I-589 during the asylum interview, if it is different from the address on the notice. If the INTERVIEW DATE field does not contain an "N/S" and the CURR OFFICER field is blank, bring it to the attention of a supervisor so that s/he can find out why no action appears to have been taken on the asylum application. If the notice was submitted after the interview, asylum office personnel update the Address Change (MOVE) screen.

See Section III(J)(3) on the consequences of failing to appear at a pick-up appointment.

If the new address falls under the jurisdiction of another asylum office, the asylum office where the interview was conducted retains jurisdiction over the case. The applicant is still obligated to appear at the asylum office if s/he was served a *Pick-Up Notice* at the time of the interview, although the asylum office Director maintains the discretion to cancel the pick-up appointment and mail out the decision. Any documents that were generated with the applicant's old address that have not been served must be regenerated to reflect the new address.

c. Received After Service of a Decision

Asylum office personnel update RAPS and route the evidence of the change of address to the file.

B. CATEGORIES OF CASES

1. Aliens Not Entitled to Proceedings under Section 240 of the INA

Certain categories of aliens enumerated in 8 CFR 208.2(c)(1) are entitled to only limited immigration judge hearings for consideration of asylum and withholding or deferral of removal applications only. The six so-called "asylum-only" categories are applicants who applied for asylum after April 1, 1997 and are:

- Crewmembers;
- Stowaways who pass the credible fear standard;
- Applicants for admission under VWPP (in the inspections context);
- VWPP overstays;
- Aliens ordered removed under section 235(c) (security and related grounds); and,
- Nonimmigrants admitted pursuant to 101(a)(15)(S) (witnesses and informants).

"VWPP" and "VWP" may be used interchangeably. VWPP stood for Visa Waiver Pilot Program. The program is now permanent. Either abbreviation is acceptable.

The asylum program does not take jurisdiction to consider affirmative asylum applications from members of these six categories. The regulations currently direct such individuals not under the jurisdiction of EOIR to file their asylum applications directly with the District Director, who will issue an I-863 and forward the asylum application to the Immigration Court. 8 CFR 208.4(b)(5). When the asylum office encounters an application from a member of one of the six "asylum-only" categories, the asylum office issues the I-863 and forwards the I-863 and asylum application to the appropriate Immigration Court. When encountering such a case, asylum office personnel take the following actions:

- If the interview has not yet taken place, cancel or suspend the interview.
- Copy any documents that evidence the applicant's status and place them in the file.
- Print any NIIS screens that show the applicant's entry into the U.S. and place them in the file.

If the applicant was ordered removed under INA § 235(c) or admitted pursuant to INA § 101(a)(15)(S), contact HQASM Operations for further guidance before proceeding. For other "asylum-only" category cases, depending on local asylum office policy, either issue a *Pick-up Notice* to the applicant, or serve the necessary documents on the applicant while s/he is still in the asylum office. In either case, asylum office personnel:

- Prepare a *Referral Notice*, and at "Other Reasons for Referral," write: "You are an alien **[insert applicable language from 8 CFR 208(c)(1)(i)-(vi), e.g.**

"crewmember who has been refused permission to land under section 252"] and filed an asylum application on or after April 1, 1997. INS does not have jurisdiction over your case and only an Immigration Judge may hear your claim. Your Form I-589 *Application for Asylum and for Withholding of Removal* will be forwarded to the Immigration Judge."

- Prepare a Form I-863, *Notice of Referral to Immigration Judge*, placing a ✓ in the box next to item 3 and in the appropriate box indicating the category of case.
- Prepare a Form I-213, if required.
- Copy the I-589 for the Immigration Judge.
- Administratively close the asylum application on the Close Case (CLOS) screen, indicating the reason for closure as "IJ Jurisdiction" (C4), placing a "Y" in the "Send to IJ" field.

The following guidance, specific to certain of the above categories, is provided to clarify when the above procedures apply.

a. Crewmembers

i. Crewmembers who applied for asylum on or after 4/1/97

An asylum office does not take jurisdiction to adjudicate an asylum claim filed on or after April 1, 1997 by a crewmember, as defined in the INA. As used in the INA, the term crewmember only pertains to an alien who last arrived in the U.S. on a vessel in the capacity of a working crewman and: 8 CFR 208.2(c)(1)(i)

- is applying for a landing permit;
- was inspected and refused admission; or
- was inspected and admitted as a D-1 or D-2 nonimmigrant.

An alien who arrived in any other manner is not considered a crewmember for INA purposes, even though the alien may possess a D nonimmigrant visa or be regularly employed as a crewmember. For example, a person regularly employed as a crewman but who was last admitted as a B-2 tourist or a C-1 alien in transit to a vessel, or who arrived without inspection, would not be classified as a crewmember for INA purposes. In such a case, the asylum office may take jurisdiction to adjudicate the application (provided the applicant in not under the jurisdiction of EOIR).

A crewmember who last arrived in a working capacity on a vessel, was inspected and paroled (e.g. for medical treatment), and is still maintaining parole status is processed for asylum purposes as any other parolee. *See* Section III(Q). However, if parole status has expired or been terminated, the alien reverts to an applicant for a landing permit and the guidance in this section applies.

ii. Crewmembers who applied for asylum prior to 4/1/97

The asylum office takes jurisdiction over asylum claims filed by crewmembers prior to April 1, 1997. If the crewmember is found ineligible for asylum and is not maintaining lawful immigrant, nonimmigrant or Temporary Protected Status, asylum office personnel process the crewmember's application as a regular referral, issuing an I-862 (NTA). 8 CFR 208.2(b)

b. Stowaways

An arriving alien who has been identified *by inspections* as a stowaway is not entitled to make an affirmative asylum application or to removal proceedings pursuant to INA § 240. 8 CFR 208.2(c)(1)(ii)

See INA §§ 235(a)(2), 235(b)(1). Stowaways are interviewed by asylum officers for credible fear. 8 CFR 208.30. For procedures relating to stowaways, refer to the *Credible Fear Procedures Manual*. If inspections identified the applicant as a stowaway, but the applicant absconded before the credible fear process could be completed and the applicant later files an I-589 with the Service, the asylum office interviews the applicant for credible fear and issues an I-863 as follows: 1) for asylum-only proceedings if credible fear is found; **or** 2) for IJ review if a negative credible fear decision is made and the alien requests review. If no credible fear is found and the applicant does not request IJ review, asylum office personnel refer the stowaway to a Detention Officer for removal from the U.S. For more detailed guidance on processing true stowaways, see *Procedures Manual - Credible Fear Process*.

An applicant who testifies that s/he traveled to the United States by concealing him or herself on a ship, but jumped ship or otherwise absconded without being identified by INS as a stowaway is *not* processed as a stowaway. The asylum office accepts affirmative asylum applications from these individuals and treats them as having entered without inspection (EWI).

8 CFR 208.2(c)(1)(iii), (iv)

c. Visa Waiver Pilot/Permanent Program (VWPP) Applicants

The asylum office does not take jurisdiction to adjudicate the asylum application of a principal applicant who was admitted under the VWPP **unless**:

- The applicant was inspected and properly admitted under the Visa Waiver Pilot or Permanent Program (VWPP) **and**
- The I-589 was **filed before** the expiration of the 90-day period of authorized stay under the VWPP.

-OR-

- The application was **filed before April 1, 1997**, regardless of when the 90-day period of admission expired.

The evidence required to support a finding of proper admission under the VWPP is discussed in the next section. For the purposes of these procedures, proper admission **does not include** admission by fraud. For example, if the asylum applicant filed his or her I-589 after April 1, 1997 and before the expiration of his/her 90-day period of admission under the VWPP, but was admitted through the use of fraudulent documents, the asylum office does not have jurisdiction to adjudicate the I-589. If the asylum office does not have jurisdiction over the application, asylum office personnel follow procedures in this section above under III(B)(1) *Aliens Not Entitled to Proceedings under Section 240 of the INA.*

When the asylum office takes jurisdiction to adjudicate an asylum application pursuant to the above procedure, the asylum office retains jurisdiction to complete adjudication of the case, even if the 90-day period of admission expires before the asylum office completes processing of the case. The application is processed identically to other asylum applications for interview and decision, except that for referrals, an I-863 *Notice of Referral to Immigration Judge* is prepared instead of an NTA. In RAPS, the deportation code is A5. The status at entry to be input in RAPS on the I589 screen is "WB – Visitor Without Visa 90 Da [*sic*]."

i. Evidence of Admission Under the VWPP

An applicant must produce evidence of his/her admission (whether *bona fide* or *mala fide*) to the U.S. under the VWPP for the asylum office to process the case using the procedures in this section relating to applicants admitted under the VWPP. When an applicant has been admitted as a VWPP visitor, these procedures apply regardless of whether the applicant gained admission properly and lawfully or by falsely claiming to be a national of a VWPP-designated country (including presentation of a counterfeit or impostor passport from such country).

The fact that an applicant cannot establish entry as a VWPP applicant does not necessarily mean that s/he failed in the burden of proof as to entry for purposes of the one-year filing deadline, because manner of entry is not necessarily determinative of date of entry. AOs should consult the one-year filing deadline lesson plan for standard of proof issues.

If the applicant claims admission under the VWPP (either with genuine or fraudulent or fraudulently obtained documents), s/he must present a passport or signed I-94W card evidencing the admission, or the asylum officer must confirm the applicant's admission under the VWPP in NIIS or other INS system containing entry information. An applicant's credible testimony or sworn statement will ordinarily not suffice for the asylum office to treat the applicant as having been admitted as a VWPP visitor, but asylum office Directors maintain the discretion to permit the filing of I-863s based on sworn statements alone if it is determined, in coordination with District Counsel, that proceedings will not be terminated. Forms I-94W for VWPP visitors bear the notation "WB" for business visitors and "WT" for visitors for pleasure.

If an applicant's claim of admission under the VWPP cannot be substantiated as described above, the asylum office does not consider the applicant as having been admitted under VWPP, and the procedures in this section do not apply. The manner of entry for the applicant is recorded as "unknown" on the I589 screen in RAPS, and the AO proceeds with the interview and adjudication of the claim. If such an applicant is to be referred to the Immigration Judge, asylum office personnel issue an NTA (not an I-863) containing an NVD1 or NVD2 charge, depending on local office policy.

If the applicant is able to establish his/her admission into the U.S. under the VWPP, even through the use of a fraudulent passport, asylum office personnel determine jurisdiction and process the case according to the guidance contained in this section, III(B)(1), *Aliens Not Entitled to Proceedings Under Section 240 of the INA*.

ii. Dependents Admitted under the VWPP

The asylum office takes jurisdiction over a dependent who entered the U.S. as a VWPP visitor when taking jurisdiction over the P.A., regardless of when the application was filed or whether the 90-day period of authorized stay has expired. The dependent's status at entry in RAPS is "WB."

A dependent who entered as a VWPP visitor who is being referred to the Immigration Judge should receive an I-863 instead of an NTA, even if the P.A. is receiving an NTA. When preparing the referral letter for the principal, asylum office personnel insert the following language in the "Other" section of the referral letter:

> "Your dependent, (name, A#), was admitted to the U.S. as a Visa Waiver Program (VWP) visitor under section 217 of the Immigration and Nationality Act, and has remained longer than authorized. A VWP visitor is entitled to only limited immigration judge proceedings to review his/her claim for asylum. Therefore, s/he is being issued a Form I-863 for such a proceeding in accordance with 8 CFR 208.2(c)(1) and 217.4(b)."

[1] HQASM is requesting updates to RAPS and the RAPS Forms Generation Module that will permit generation of Form I-863 in RAPS.

The deportation code in RAPS is "A5." Because RAPS does not generate Forms I-863, asylum office personnel will need to enter "OVER" as the charge on the OSCG screen in order to create a record that a charging document was prepared for the dependent and to complete the case in RAPS.[1] Asylum office personnel may update the OSSE screen the same way as for other referrals.

iii. Applicant Paroled into U.S. During VWPP Contingency Plan

Applicants from VWPP-designated countries who were paroled into the U.S. during the interim period between the expiration of the Visa Waiver Pilot Program and the enactment of the Visa Waiver Permanent Program Act (May 1, 2000 – October 30, 2000) are processed as parolees. See Section III(Q), *Parolees*, in this Manual. *See* Langlois, Joseph E. Asylum Division. *Visa Waiver Pilot Program (VWPP) Contingency Plan Guidance,* (Washington, DC: 10 May 2000), 1 p. A visitor paroled under the contingency plan should have a passport and Form I-94W with the word "admitted" crossed out and the word "paroled" written in its place. The paroled code for these cases was "CP."

See 8 CFR 217.2(a) for the list of designated countries.

iv. Guam Visa Waiver Program

The asylum office has jurisdiction to adjudicate asylum applications filed by applicants admitted to Guam pursuant to the Guam Visa Waiver Program (GVWP). The application is processed identically to other asylum applications for interview and decision, except that for referrals, an I-863 *Notice of Referral to Immigration Judge* is prepared instead of an NTA. In RAPS, the deportation code is A5. Because RAPS does not generate Forms I-863, asylum office personnel will need to enter "OVER" as the charge on the OSCG screen in order to create a record that a charging document was prepared for the dependent and to complete the case in RAPS. Asylum office personnel may update the OSSE screen as they would for other referrals.

References:
INA § 212(l)
8 CFR 212.1(e)

2. Applicants for Admission at Land Border Ports of Entry

An applicant for admission at a land border port of entry is ineligible to make an affirmative application for asylum. *See* INA § 208(a)(1). Applicants for admission at land border ports of entry will be placed in expedited removal proceedings and referred for a credible interview pursuant to 8 CFR 208.30. For guidance relating to credible fear determinations in the context of expedited removal, refer to the *Credible Fear Procedures Manual.*

The RAPS special group code "BOR," which was formerly used to designate the case of an applicant who was in Mexico or Canada awaiting an affirmative asylum interview has been disabled from future use in a case with a filing date on or after January 29, 2002.

See Cronin, Michael D. INS Office of Programs. *Aliens Seeking Asylum at Land Border Ports-of-Entry*, Memorandum to Michael A. Pearson, INS Office of Field Operations. (Washington, DC: 29 January 2002), 3 p.

3. Children Filing as Principal Asylum Applicants

The asylum office Director must bring to the attention of HQASM any case of a child under the age of 18 who has applied for asylum as a principal and whose parent or legal guardian has not given express consent for the child to apply for asylum in the United States. HQASM and OGC will provide specific guidance on processing the case, if necessary, based on the particular circumstances of each child.

Special guidelines were developed by the Office of International Affairs for adjudicating asylum claims filed by individuals under the age of 18 who are applying for asylum independently, rather than as dependents. See Weiss, Jeffrey. Office of International Affairs. *Guidelines for Children's Asylum Claims*, Memorandum to Asylum Officers,

Immigration Officers and Headquarters Coordinators (Washington, DC: 10 December 1998), 30 p.

AOs must familiarize themselves with these guidelines in relation to guidance in Section II(J) on conducting an asylum interview and the applicable AOBTC Training Materials, including *Interviewing Parts I – IV*.

4. Coercive Family Planning (CFP)

In September 1996, the Illegal Immigration Reform and Responsibility Act (IIRIRA) amended the refugee definition to include persons who have been persecuted in the past or have a well-founded fear of future persecution on the basis of a forced abortion, involuntary sterilization, failure or refusal to undergo such a procedure, or for other resistance to CFP practices.

The acronyms "CFP" and "CPC" (coercive population control) are both used within INS and are interchangeable.

IIRIRA placed a cap of 1,000 on the number of individuals who may be admitted as refugees or approved for asylum status on a claim relating to CFP practices during any fiscal year.

Only principal applicants are counted against the 1,000 cap

HQASM changed RAPS so that it could track the number of asylum claims based solely on CFP practices. First, a "CFP" designation was created for the "BASIS OF CLAIM" field on the both the PDEC and FDEC screens. Second, procedures were instituted to allow for a conditional grant of asylum to an applicant whose asylum claim is based solely on resistance to coercive family planning practices.

See *Matter of X-P-T,* Int. Dec. 3299 (BIA 1996).

a. Conditional Grant – Definitions And Entitlements

When an applicant is granted asylum "conditionally," it means that the applicant has met all of the conditions to be granted asylum status; however, s/he cannot receive a final asylum approval because a CFP authorization number is unavailable. The following conditions must be present in order for an applicant to receive a conditional grant of asylum:

- The applicant is eligible for a grant of asylum based **solely** on CFP practices.
- The asylum office has received results of identity and security checks for the P.A. and all dependent family members who require them, and these results allow for an asylum approval.

If the claim is based upon CFP practices and another ground, such as religion, the asylum office should **not** prepare the case for a conditional grant, as the applicant is not being granted **solely** upon resistance to CFP practices. For this reason, the updating of RAPS under the "BASIS OF CLAIM" field is extremely important. If the applicant is eligible for asylum based upon two (2) grounds (CFP + another ground), the AO must enter both grounds into RAPS. Asylum office personnel then prepare an asylum approval instead of a conditional grant after identity and security checks are complete, and those results allow for an asylum approval.

An individual who receives a conditional grant may remain in the United States and apply for employment authorization as a recommended approval under 8 CFR 274a.12(c)(8)(ii). Qualified derivative applicants included on the asylum application also receive conditional asylum status and may apply for employment authorization. A principal who has received a conditional grant is not eligible to file a Form I-730, nor is the applicant entitled to apply for adjustment of status under section 209(b) of the Act.

b. CFP Final Approval Authorization Number

If the asylum claim is based solely upon CFP practices, the asylum office cannot prepare an *Asylum Approval* until it receives a CFP authorization number from HQASM. Only 1,000 CFP authorization numbers are released each year, which corresponds to the 1,000 per year statutory cap on asylum grants and refugee admissions based on resistance to CFP practices.

HQASM currently compiles data files of persons who have received conditional asylum grants based on coercive population control, as reported by the eight asylum offices, the Immigration Courts, and the BIA. The background identity and security checks of conditional grantees near the top of the list are periodically updated by HQASM with assistance from the asylum offices and, for cases before EOIR, District Counsel. On an annual basis, individuals with completed and updated security checks who remain eligible for asylum are issued the 1,000 final approval authorization numbers for that fiscal year chronologically based on the date the INS or EOIR issued the conditional grant. Issuance of the authorization number allows the asylum office to issue a final approval of asylum to the applicant and any qualified dependents included on the application. The numbers are usually issued in two groups to ensure that any cases missed during the first round that should have been issued a number or whose security checks had not yet cleared receive a number in the second round.

EOIR typically issues a press release each year to notify the public that the final approval authorization numbers are being issued. The press release includes a cut-off date representing the date applicants with conditional grants effective on or before this date with cleared security checks should receive final approval. The press release also instructs applicants with questions about receiving a final approval to contact the asylum office that issued the conditional grant.

c. Processing a Conditional Grant

i. Security checks current and complete at the time decision is initially prepared

If all the identity and security checks are current and complete for the P.A. and all dependents who require identity and security checks at the time the decision is initially prepared, asylum office personnel take the actions listed below. "Identity and security checks" include FBI name checks, FBI fingerprint checks, IBIS, and other checks on the *Asylum and NACARA § 203 Background Identity and Security Checklist* (Appendix A 62).

HQASM has requested a change to RAPS to allow AOs to proceed to a PDEC of GC without entering a PDEC of GR (recommended approval) first when security checks are complete. This change may not be in effect at the time of publication

- Update the Preliminary Decision (PDEC) screen in RAPS to indicate a conditional grant ("GC"). A dependent, if any, is updated as a recommended approval ("GR").
- Prepare a *Conditional Grant* letter (Appendix A 11). The effective date of the conditional grant is the same date RAPS is updated as a conditional grant.
- Serve the *Conditional Grant* letter either by regular or certified mail, as dictated by local asylum office policy.

ii. Security checks out of date or incomplete at the time decision is initially prepared

When security checks are incomplete or outdated at the time of the initial decision, the asylum office issues the applicant a recommended approval. RAPS will convert a recommended approval to a conditional grant as follows:

- RAPS will automatically convert a case ONLY when ALL family members have a NONIDENT response from the FBI.

- RAPS assigns the conditional grant date as the earliest date on which all family members had NONIDENT responses, but no earlier than the date on which the AO entered the recommended approval.

While RAPS automatically updates cases as described above, asylum office personnel remain responsible for timely notifying the applicant of his or her status by mailing a conditional grant letter and confirming the applicant's continued eligibility for a conditional grant by checking IBIS and FBI name check results before mailing out the conditional grant letter. The weekly RAPS report, CPC PDEC GR CONVERTED TO GC, is generated listing each case that has been converted to a conditional grant.

A second part of the report, CPC PDEC GR NOT CONVERTIBLE TO GC, is used to identify cases that could not be converted to conditional grant due to a lack of current fingerprint response or a REJECT or IDENT response, and which may require additional follow-up to ensure the case is on track to an appropriate completion. If a principal applicant or dependent receives an FBI response of MAX. REJECT or IDENT, the CPC coordinator must ensure that all appropriate follow-up is completed to establish the applicant's eligibility for a conditional grant of asylum and that the conditional grant is entered into RAPS manually. The report lists reasons a case could not be converted as "FINGERPRINTS NEEDED" or "OVERRIDE REQUIRED." FINGERPRINTS NEEDED may signify, among other things, that a case has no fingerprint appointment request pending, or a case in which fingerprints have been taken but a response has not yet been updated in RAPS. OVERRIDE REQUIRED may refer to an IDENT response or double REJECT responses. The CPC coordinator reviews RAPS and the A-file and ensures that the required follow-up, if any, is completed.

Asylum office personnel and CPC coordinators are not to remove, correct, or otherwise change a conditional grant date in RAPS without consulting with HQASM. Asylum office personnel who perceive problems with automatic RAPS CPC programs should refrain from making any corrective changes and contact HQASM immediately.

d. Preparing an Asylum Approval after Receipt of a CFP Authorization Number

Each asylum office Director has appointed a CFP Coordinator who is responsible for ensuring that a *Conditional Grant* becomes an *Asylum Approval* according to the following instructions, or as indicated by HQASM:

- HQASM updates RAPS with the CFP final approval authorization number, or issues to each CFP Coordinator a list of CFP numbers for cases for manual updating in RAPS using the Number (NUMB) command.
- After verifying that the identity and security checks are complete and the results allow for an approval, the CFP Coordinator ensures the cases are promptly prepared as *Asylum Approvals* in accordance with local policy.
  - The individual preparing an *Asylum Approval* should place a printout of the Case Status (CSTA) screen on the right-hand side of the file, after entering the Final Decision (FDEC) of G1. This printout will show which CFP number was given to the applicant.

"Identity and security checks" include FBI name checks, FBI fingerprint checks, IBIS, and other checks on the *Asylum and NACARA § 203 Background Identity and Security Checklist* (Appendix A 62).

5. Credible Fear-Screened Affirmative Asylum Applicants

An asylum office may encounter an affirmative asylum application from an individual who was screened in through the credible fear program, but whose charging document was not filed or was terminated by the IJ due to a technical fault. RAPS will display a "Y" in the "APSS" field on the CSTA screen if there is a record of an individual in the APSS (*Asylum Pre-Screening System)*, the system used for adjudicating credible fear cases. If the Y appears, asylum office personnel check the APSS system to determine the outcome and status of the credible fear adjudication, and whether a charging document was issued but not filed with EOIR. Because such individuals are subject to the expedited removal/credible fear screening process, which has begun but was not completed due to a technical error, the asylum office will not take jurisdiction to hear their affirmative asylum claims. Instead, if the asylum office encounters such an individual, the asylum office will correct the technical error by preparing and filing the appropriate charging document. Asylum office personnel take the following steps:

- If the A-file is not at the asylum office, order and wait for the A-file.
- Cancel or suspend the asylum interview, as appropriate.
- Notify the applicant that because he or she is subject to provisions of INA § 235, the asylum office does not hear the affirmative asylum application, and that the application will be forwarded to the immigration court with jurisdiction over the applicant's residence. Explain this to the applicant in person if s/he is in the office and in all cases, issue to the applicant a *Notice of Institution of Removal Proceedings following Positive Credible Fear Screening* (Appendix A 65)
- Prepare and serve the charging document, copying the I-589 for the IJ.
- Close the case in RAPS using close code C4, "IJ Jurisdiction."

6. Deferred Enforced Departure (DED)

Deferred Enforced Departure, referred to as DED, grants certain, qualified citizens and nationals of designated countries a temporary, discretionary, administrative protection from removal from the United States and eligibility for employment authorization for the period of time in which DED is authorized. The President determines which countries will be designated based upon issues that may include, but are not limited to, ongoing civil strife, environmental disaster or other extraordinary or temporary conditions. The decision to grant DED is issued as an Executive Order or Presidential Memorandum.

Note:
Please see below at Section III(B)(8) for procedures governing GTMO/DED Haitians.

An alien does not need to apply for and be granted DED in order to benefit from its provisions. Although DED status is automatic for qualified citizens and nationals of designated countries, some exceptions exist to eligibility under this program, including persons who have committed certain crimes, persons who are persecutors, and persons who have previously been deported, excluded or removed.

Because the decision to extend DED protection is made by the President, it is not a statutory provision under the Immigration and Nationality Act and as such, it is not considered an immigration "status." DED is not considered to be a valid immigrant, nonimmigrant, or Temporary Protected Status under 8 CFR 208.14(c)(2). Therefore, individuals who are covered by DED and are not eligible for asylum must be referred to the immigration judge pursuant to 8 CFR 208.14(c)(1) unless they otherwise have valid status or parole as described in 8 CFR 208.14(c)(2) or (3). DED does not prevent the INS from obtaining a removal order. Rather, it prevents the INS from executing that order during the pendency of DED. Therefore, asylum offices should proceed with referrals of such cases when asylum is not granted

See Langlois, Joseph E. Director, Asylum Division. *Clarification of Procedures for Processing Applicants Covered by Deferred Enforced Departure (DED) who are Ineligible for Asylum*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 1

such cases when asylum is not granted.

November 2001), 2p.

When referring a person who appears to be covered by DED, include a memorandum to the file addressed to District Counsel and Detention and Removal indicating, "The individual who is the subject of this memorandum may be covered by Deferred Enforced Departure (DED)."

7. Expeditious Processing Required

An asylum office Director may determine that it is in the best interest of INS to process an asylum application more expeditiously than usual because the case contains sensitive issues or there is special interest in the case. Examples include, but are not limited to applicants who are being placed in witness protection programs; applicants who are providing information of national security concerns to other agencies within the Federal Government; and cases in which there is a family member in jeopardy (e.g., spouse or child of an asylum applicant is in danger of harm in the country of claimed persecution).

Once the Director determines that the asylum office will expedite the processing of an asylum application, the following process occurs:

- The Director or Security Officer communicates the essential facts of the case to the HQASM Supervisor, Quality Assurance/Training at (202) 305-2759. HQASM/QA alerts the INS Public Information Officer, if appropriate, and the DRL/CRA.
- Upon receipt of the application, asylum office personnel send the I-589 application and supporting documents to HQASM/QA and the appropriate desk officer in DRL/CRA. The DRL/CRA may decide to respond telephonically directly to the asylum office Director, with written confirmation to follow.
- An AO interviews the applicant as soon as practicable and prepares an *Assessment*. Following the interview the asylum office sends to HQASM/QA the I-589, supporting documentation, *Assessment*, interview notes, and any recommendation from DRL/CRA. If the materials are 15 pages or less, asylum office personnel may fax them to HQASM/QA at (202) 305-2918. If the materials are more than 15 pages, asylum office personnel sends them to HQASM/QA via Federal Express at 111 Massachusetts Avenue, 2nd floor, ULLICO Bldg., Washington, D.C. 20001.
- HQASM/QA responds within three days of receipt. Until then, the asylum office places the case on HOLD - HQ in RAPS.

8. GTMO/DED Haitians

Certain Haitian nationals who filed for asylum before December 31, 1995, or were paroled into the U.S. before December 31, 1995, were eligible for deferred enforced departure (DED). These same individuals were also entitled to apply for Lawful Permanent Resident (LPR) status through the Haitian Refugee Immigration Fairness Act (HRIFA). The special group codes in RAPS for these cases are "HDD," "HGN," "HGT," "HGX" and "HGY."

Until further notice by HQASM, an asylum office does not interview an asylum applicant who was eligible for Haitian DED, unless the applicant requests to proceed with the affirmative asylum adjudication. See Langlois, Joseph E. INS Asylum Division. *Suspension of Adjudication in the Cases of DED Eligible Haitian Applicants*, Memorandum to Asylum Office Directors (Washington, DC: 14 January 1998), 2 p.

9. Legalization/Special Agricultural Workers (SAW)

Certain asylum applicants may have filed applications for adjustment of status pursuant to INA section 210, the special agricultural workers (SAW) program, and INS section 245A, the general legalization program, created by the Immigration Reform and Control Act of 1986 (IRCA).

Applicants who filed these special adjustment applications are commonly referred to as Legalization or SAW applicants. Aliens who applied for this benefit were given a 90-93M series A-number.

IRCA contains confidentiality provisions that restrict the use, publication and examination of information furnished pursuant to applications under INA sections 210 and 245A.

Under the confidentiality provisions, INS employees may use "information furnished pursuant to an application" for SAW status only (1) to adjudicate the application, or (2) for prosecution for fraud under section 210(b)(7). They may use information furnished pursuant to an application for legalization under section 245A only (1) to adjudicate the application, (2) for prosecution for fraud under section 245A(b)(6), or (3) for preparation of reports to Congress under section 404 of the Immigration Reform and Control Act, furnishing such information in the same manner and circumstances as census information may be disclosed under 13 U.S.C.

INA section 210(b)(6) and 245A(c)(5).

For more information about confidentiality provisions, see GENCOU Opinion 89-73, *Utilization of Information from IRCA Records*, 7 November 1989 on INS INSERTS database.

"Information furnished pursuant to an application" includes information supplied by the alien on the application form, any documentation the alien may submit in support of the application, and information furnished on behalf of the application by any third party. An INS document, such as an I-94, that is provided by the alien in support of a legalization or SAW application is protected by confidentiality. This means that an AO is **prohibited** from using any information pertaining to a legalization or SAW case in the adjudication of an asylum claim.

Because of these confidentiality provisions, when a Legalization/SAW applicant applies for asylum, Service Center personnel assign the applicant a new A-number not in the 90-93M range if only the Legalization/SAW A-file exists. Service Center personnel do not routinely perform this task, so they create a Temporary File (“T-file”) and order the shipment of the Legalization file to the asylum office.

See Section III(K)(3) for further information on T-files.

Asylum offices, must, therefore, create a new A-file for all Legalization/SAW cases if another non-Legalization/SAW A-number does not exist, regardless of whether the legalization application has been approved, denied, or is still pending final resolution. The following are procedures asylum office personnel take to process the asylum application:

For information on Legalization files, see Records Operations Handbook (M-407), chapter 3(C) in INSERTS.

- Check CIS for all possible A-numbers that may have been assigned to a Legalization/SAW applicant.
- If a non-Legalization/SAW A-number already exists, order the file in CIS and create a Temporary File (T-file).
- If a non-Legalization/SAW A-number does not exist, create a new A-file at the asylum office according to procedures in Section II(C)(2)(b) and the *Records Operations Handbook*, Chapter 2.
- Input the new A-number into RAPS using the CHAN command.
- File the documentation relating to the asylum application from the 90-93M series file into the new file.

- Use only the new file to adjudicate the asylum application.

The AO who adjudicates the asylum application must not review any materials relating to the Legalization or SAW application that were contained in the 90M-93M series file. These materials can usually be found underneath a red file marker.

10. NACARA – ABC/ABR/ABX

Pursuant to a settlement agreement entered into by INS, EOIR, and DOS in American Baptist Churches v. Thornburgh (*ABC*) 760 F. Supp. 796 (N.D. Cal. 1991), persons identified as *ABC* class members who have registered for *ABC* benefits, and filed asylum applications by the qualifying dates are entitled to a *de novo* asylum adjudication pursuant to the 1990 regulations, and special procedures set forth in the settlement.

See the NACARA Procedures Manual about ABC cases.

These applicants and their qualifying relatives may file for Suspension of Deportation/Special Rule Cancellation pursuant to the Nicaraguan and Central American Relief Act (NACARA). The special group codes for these cases are "ABC" and "ABR." The ABC designation is overinclusive, and may be present even when the individual is not eligible for *ABC* benefits. The ABR code is entered when a file review has occurred and the applicant has not been found ineligible for *ABC* benefits. The special group code "ABX" is used when a case has been removed from the ABC or ABR special group, if evidence surfaces clearly indicating that the individual is not eligible for *ABC* benefits.

11. NACARA – DEP

The DEP special group code in RAPS is used only for certain NACARA applications. Asylum office personnel update a case as "DEP" when an asylum office finds a principal applicant ineligible for an ABC interview, but s/he appears eligible to apply for benefits under section 203 of NACARA based upon the his/her relationship to a parent or spouse who has an asylum application pending with the asylum program and appears eligible to apply under section 203 of NACARA.

The updating of the case with the DEP code will prevent RAPS from scheduling the applicant for an asylum interview along with other non-special group cases and therefore, gives the applicant an opportunity to apply for benefits under NACARA before being interviewed.

12. NACARA – FSB

Certain nationals of Former Soviet Block (FSB) countries who entered the U.S. on or before December 31, 1990, and who filed for asylum on or before December 31, 1991, are also entitled to file for Suspension of Deportation/Special Rule Cancellation pursuant to the Nicaraguan and Central American Relief Act (NACARA). The special group code in RAPS for these cases is "FSB."

See the NACARA Procedures Manual about FSB cases.

13. NACARA – NCG

Section 202 of NACARA allows certain Nicaraguan and Cuban nationals who are physically present in the United States to adjust status to that of lawful permanent resident. In order to be eligible for benefits under NACARA, an applicant must:

- be a national of Nicaragua or Cuba;
- be admissible to the United States under all provisions of section 212(a) of the INA, other than those provisions specifically excepted by NACARA;
- have been physically present in the United States for a continuous period beginning no later than December 1, 1995, and ending no earlier than the

date the application for adjustment is filed (not counting absences totaling 180 days or less); and
- have properly filed an application before April 1, 2000.

The special group code in RAPS for these cases is "NCG." Until further notice by HQASM, an asylum office does not interview an asylum applicant who is designated as "NCG" in RAPS, unless the applicant requests to proceed with the affirmative asylum adjudication.

14. National Security Matters, Including Known or Suspected Terrorists and Human Rights Abusers

An asylum office must undertake special notification procedures for asylum applications involving national security matters, as defined in this section. National security matters fall into the categories described below.[†] The categories are provided only to assist in identification of cases. All categories of cases are subject to the same procedures.

Terrorism-related categories:

- Any individual associated with any of the organizations included in the State Department's *List of Terrorist Organizations.*
- Any individual who admits to having engaged in terrorist activities.
- Any individual who testifies to having been falsely accused of engaging in terrorist activities or of being a member of a terrorist organization.
- Any individual who is suspected of being involved in terrorism, or of being a direct or indirect supporter of a terrorist organization(s).[†]
- Any individual whose actions may fall within the definition of terrorist activities under the USA Patriot Act of 2001.

The definitions of these categories were significantly broadened under the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism* (USA PATRIOT) Act of 2001. For more details and a summary of the legislation, see Ziglar, James W. *New Anti-Terrorism Legislation* (Washington, DC: 31 October 2001), 8 p., appended to Langlois, Joseph E. INS Asylum Division. *Procedures for Contacting HQASM on Terrorist Cases* (Washington, DC: 3 January 2002), 2 p.

Human rights abuse-related categories:

- Human rights abusers and modern-day war criminal cases, inquiries, or allegations, to include activity involving an individual suspected of having ordered or engaged in persecution of others, war crimes, genocide or torture.[†]

For the purpose of these procedures, a human rights abuser of national security interest includes an individual who the asylum officer has reasonable grounds to suspect has engaged in (either directly or indirectly), ordered, incited, assisted or otherwise participated in persecution of others, war crimes, genocide or torture. For example, individuals who have committed, ordered, incited, assisted, otherwise participated in, or were responsible for murder or extrajudicial killings, disappearances, rape, kidnapping, mutilation, prolonged and arbitrary detention, enslavement, forced pregnancy, forced sterilization, or the recruitment of child soldiers would be considered human rights abusers. There does not need to be a nexus between the human rights abuse and one of

[†]*See* Williams, Johnny N. INS Office of Field Operations. *Designation of National Security Matters* (Washington, DC: 18 December 2002), 7 p.

Langlois, Joseph E. Asylum Division. *Known or Suspected Human Rights Abusers,* Memorandum to Asylum Office Directors, et al. (Washington, DC: 11 September 2000), 2 p.

Pearson, Michael A. INS Office of Field Operations. *Human Rights Abuse Memorandum of Understanding*, Memorandum to Regional Directors, et al. (Washington, DC: 29 September 2000).

Weiss, Jeffrey L. INS Asylum Division. *Processing of Claims Filed by Terrorists or Possible Terrorists* (Washington, DC: 1 October 1997), 2p. plus attachments.

the five protected grounds in the refugee definition in order for the individual to be a suspected human rights abuser of national security interest.

Other national security-related categories:

- Other national security cases, inquiries or allegations to include activity involving an individual suspected of any of the following: espionage, engaging in illegal acts involving weapons of mass destruction, being an agent or officer of a hostile foreign intelligence service, or engaging in violations of the import and export laws relating to sensitive information or technology.[†]

Each office designates a point of contact (POC) for national security matters. If there is reason to believe that an applicant is a national security risk as defined in this section, asylum office personnel take the following actions:

- Notify the asylum office POC for terrorist and national security issues.
- Within 24 hours of identification of a national security issue, the POC contacts the Assistant District Director for Investigations (ADDI) at the local INS District Office to advise him or her of the case. The ADDI may forward the case to the JTTF and/or instruct asylum office personnel as to how the case will be handled.
- Prior to the issuance of any decision on the asylum application, obtain from the ADDI or JTTF (when involved) clearance to issue a decision on the application.
- Prior to the issuance of an approval of asylum for any applicant described in this section, obtain concurrence from HQASM/QA in accordance with regular quality assurance referrals to HQ.
- Document all actions taken in the file.

While the case is pending resolution of national security matters, asylum office personnel place the case on hold in RAPS using code ZZ-Other until a new hold code is established for such cases, unless the case has been referred to HQASM, in which case HQ-Headquarters Review is appropriate.

a. Guidelines for Liaison with District Personnel

i. Arrests in the Asylum Office

An INS officer may arrest an alien at the time of issuance of an NTA or at any time thereafter. Depending upon the circumstances of a particular case, it may be appropriate for INS to arrest an individual for reasons related to national security. Whether or not to arrest an alien is within the purview of the local INS District Director, who may delegate this authority to the ADDI.

The district office may coordinate with the National Security Unit (NSU) (the operational unit at Headquarters tasked with coordinating national security matters), the National Security Law Division (the unit of legal advisors within the Office of General Counsel tasked with reviewing national security matters), and/or the FBI when determining whether to arrest an alien. If requested, the asylum POC provides to a special agent any documentation from the asylum interview indicating that the alien is of interest to national security, including a Q&A sworn statement. The POC also reminds the special agent of the confidentiality requirements of 8 CFR 208.6, should the special agent discuss the case with non-Federal government officials.

An arrest of an asylum applicant may take place at an asylum office, except that asylum

office personnel do not have the authority to detain individuals and therefore may not "hold" the alien for a lengthy period of time in anticipation of arrest. If arresting officials do not arrive in a timely manner, asylum office personnel may not prevent the alien from leaving the asylum office.

Of paramount importance in determining when and where the arrest should take place is safety. If the arrest is to take place in an asylum office, the arresting officer should be given some deference as to where and when the arrest should occur in accordance with his or her training to maximize the safety of all involved. However, the asylum office Director informs the arresting officer of the asylum office's strong interest in avoiding a disturbance that may intimidate other asylum-seekers in the office. Directors are encouraged to provide a discreet area for the arrest to take place.

ii. Preparation of Charging Documents

When an arrest is to be made and/or charging documents will be issued in a national security case, district office personnel and the asylum POC coordinate which party will issue and serve the NTA. Asylum office personnel consult with District Counsel to identify the appropriate allegations and charges when issuing the NTA in a national security case. If an NTA is serve don the applicant and filed with EOIR prior to an adjudication of the asylum application, asylum office personnel administratively close the case in RAPS using the "IJ Jurisdiction" code (C4). Otherwise, once the national security issues have been reviewed and resolved and district office personnel have cleared the case for adjudication, asylum office personnel complete a decision and update the case in RAPS according to established procedures, except that HQASM/QA concurrence is required prior to the issuance of an approval. Whenever possible, when the decision is made to go forward with an NTA, the asylum office should retain responsibility for preparing the NTA, scheduling the EOIR hearing using the ANSIR system, and serving the applicant and EOIR with the NTA packet.

8 CFR 236.1(b)

15. Temporary Protected Status (TPS)

Under section 244 of the INA, the Attorney General is authorized to grant TPS to eligible nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such designated states) upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions.

The cc:Mail system contains a Bulletin Board called "TPS Designations Chart," which contains a current chart of all states that have been designated for TPS and the effective dates of the designations. This information can also be found on the INS public Internet site. Because special group codes prevent cases from being picked up for scheduling, the "TPS" special group code in RAPS has been disabled.

If an applicant has been granted TPS, the asylum office considers him/her to be in a valid status for the purposes of processing the asylum application. "TPS" and the expiration date are entered on the VIST screen in RAPS. An applicant who has only applied for but not been granted TPS however, would not be considered in valid TPS status. In this case, the asylum office processes the case depending upon the applicant's immigration status at the time of decision.

C. CIA RESPONSES

The CIA notifies INS-National Security Unit (NSU) if it has information about an applicant. When the CIA sends information to NSU, the NSU reviews the information to

See Pearson, Michael A. Office of Field Operations. *Revised*

determine if it relates to the applicant's eligibility for asylum. If the asylum office learns that the CIA has information on an asylum applicant, the case should be placed on hold until the information can be assessed.

Procedure for Conducting Central Intelligence Agency Checks for Adjustment of Status Applications Memorandum to All Regional Directors, et al. (24 November 1999), 5 p.

For pending applications, if the NSU determines that the CIA information relates to eligibility, the NSU will: 1) notify the asylum office where the application is pending to suspend adjudication; 2) determine the necessity to investigate the applicant to supplement or corroborate the information received from the CIA; and 3) forward a recommendation along with the CIA information, if appropriate, to the asylum office for consideration before adjudication.

If an application was already approved, the NSU will explore the options for rescission or termination and make a recommendation for action to the asylum office. If an application has already been denied, the NSU will forward any recommendations for further action to the asylum office.

If there appears to be undue delay in receiving feedback from NSU, please contact HQASM-QA.

D. CONFIDENTIALITY ISSUES

Information about and contained in an asylum application or credible/reasonable fear determination is protected from disclosure to third parties without written consent of the applicant or Attorney General waiver. 8 CFR 208.6. "Generally, confidentiality of an asylum application is breached when information contained therein or pertaining thereto is disclosed to a third party, and the disclosure is of a nature that allows the third party to link the identity of the applicant to:

1) the fact that the applicant has applied for asylum;
2) specific facts or allegations pertaining to the individual asylum claim contained in an asylum application; or
3) facts or allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum."

Cooper, Bo. INS General Counsel. *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information,* Memorandum to Jeffrey Weiss, Office of International Affairs. (Washington, DC: 21 June 2001), 7 p.

1. Asylum Interviews

8 CFR 208.9(b)

Asylum interviews shall be separate and apart from the public, except at the request of the applicant. Members of the public (applicants, interpreters, attorneys, cleaning crew, and outside visitors) routinely travel through the corridors of an asylum office. Therefore, an AO should keep the office door closed during an asylum interview, if the interview is conducted in a publicly traveled area. If a particular need arises when an AO needs to interview with the door open in a publicly traveled area, a request for an exemption must be made to the SAO prior to the interview.

2. Protecting Confidentiality – Written Materials

Photocopying machines, printers, and asylum offices may contain policy memoranda, case assessments, I-589 applications and charging documents with identifying information about an asylum applicant. To ensure that all materials related to an application for

asylum remain confidential, asylum office personnel must ensure that any written materials with identifying information about an asylum applicant are not laying in plain view during an asylum interview. In addition, asylum office personnel may not permit asylum applicants, attorneys, and interpreters to wait in areas (e.g., near printers and photocopying machines) where documents that contain identifying information about an applicant are in plain view.

Any documents with an asylum applicant's name, alien-number, or any other type of identifying information, which are to be discarded, must be shredded or placed in burn boxes.

3. Access to Asylum Files by Non-INS Federal Law Enforcement Agencies (FLEAs)

8 CFR 208.6

An asylum office may disclose information to a non-INS FLEA if the information requested is needed in connection with a criminal or civil investigation that is already underway, if the Attorney General authorizes disclosure, or if the applicant provides written consent to disclose information from his/her file. Otherwise, any information about an individual applicant may not be disclosed to an agent/officer, even when that individual believes the applicant should be entitled to a benefit because of information/assistance the applicant may have provided. For example, an agent who has received cooperation from an asylum applicant may want to provide information to support the asylum application. The agent may supply the information if s/he is aware that the applicant has applied for asylum, but the INS may not disclose information about the case or case status, or confirm or deny the fact that the applicant has applied for asylum, unless the applicant consents to the disclosure in writing.

See Ashcroft, John, Office of the Attorney General. *FBI Access to INS Asylum Files*, Memorandum to Director, FBI and Commissioner, INS (Washington, DC 8 October 2001), 1p.

The Attorney General has specifically permitted the FBI access to asylum applications when:

- The request for access is made in writing (for requests as to a specific alien) to the asylum office Director and approved by the FBI Field Office Special Agent in Charge, or (for groups of aliens) to the INS Executive Associate Commissioner for Field Operations and approved by the FBI Field Office Special Agent in Charge or an appropriate Assistant Special Agent in Charge;
- The information relates to a specific alien or to an explicitly defined group of aliens; and
- The request is made as part of an authorized foreign intelligence, foreign counterintelligence, or international terrorism activity undertaken pursuant to the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.

Asylum office personnel should not disclose the FBI's interest in a particular application to the asylum applicant and should limit the number of INS employees who have knowledge of any FBI request.

4. Disclosure to Third Parties – General

8 CFR 208.6

Information contained in or pertaining to any asylum application shall not be disclosed without the written consent of the applicant, except as permitted by 8 CFR 208.6 or at the discretion of the Attorney General. This includes neither confirming nor denying that a particular individual filed for asylum. Inquiries about the status of an asylum application should not be taken or responded to by telephone except where it is possible to verify the

identity of the caller, such as when an attorney/representative can immediately fax a signed G-28. An asylum office may accept written status requests signed by the applicant (or the applicant's attorney or representative with a properly completed G-28 on file) by mail or fax. Information shall not be disclosed to third parties except as provided in 8 CFR 208.6.

An asylum office may receive inquiries from city and state officials such as probation officers and police personnel about asylum applicants. The receiving party should refer such inquiring parties or requests to the Director or her/his designated official. Pursuant to 8 CFR 208.6, information about an applicant derived from the asylum application alone cannot be disclosed to state and local law enforcement unless the applicant consents or if permitted at the discretion of the Attorney General.

5. Testimony of Other Asylum Applicants

As discussed in the beginning of this section, the facts contained in an asylum application and the testimony given by an asylum applicant in support of his/her claim are protected by the confidentiality provisions in 8 CFR 208.6. The confidentiality protections also extend to the asylum officer's assessment of the applicant's claim, in that it contains the essential facts in support of the applicant's asylum application. The purpose of the assessment is to document the reasoning of the decision and the facts upon which it is based for internal review, not to explain the decision to the public. Nevertheless, the asylum officer's assessment of the claim may be disclosed to the applicant in response to a FOIA request, or through other means. Therefore, it is important that the assessment not contain confidential information related to the asylum application of a third party, thus risking the violation of the third party applicant's right to confidentiality if the assessment is released. This does not preclude an asylum officer from considering relevant testimony of another asylum applicant in making a determination of asylum eligibility. Until further training materials on this issue have been developed, in cases where the asylum office Director and Deputy Director concur that information in one asylum application clearly contradicts the information in another asylum application and that information would change the outcome of an adjudication that would otherwise be an approval, the asylum office should contact HQASM-Operations for further guidance.

Confidentiality may be broken by the applicants themselves, and therefore waived. For example, if two or more family members were present when the testimony was given, the confidentiality of that testimony has been broken as to the applicants who were present. Similarly, if a copy of a family member's asylum application is submitted in support of the other's asylum application, the confidentiality of the copied asylum application has been broken as to those family members.

E. DEPARTING THE U.S. BEFORE A FINAL DECISION

INS presumes that an applicant has abandoned his/her asylum application if one (1) of the following occurs:

8 CFR 208.8

- The applicant departs the U.S. without first obtaining advance parole.
- The applicant departs the U.S. pursuant to advance parole and returns to his/her country of claimed persecution.

In both instances an applicant may overcome the presumption of abandonment if certain facts are established.

Even if the presumption of abandonment is overcome, an applicant's return to the country of feared persecution, depending on the circumstances, may have a bearing on the applicant's ability to establish a well-founded fear. See AOBTC Lesson Plan, *Asylum Eligibility Part II: Well-Founded Fear.*

1. Discovering Departure from U.S. before an Asylum Interview

When an asylum office learns of an applicant's departure from the U.S. before an interview has been scheduled, asylum office personnel should immediately schedule the applicant for an asylum interview.

If the applicant fails to appear for the interview, follow the instructions in Section III(J), *Failure to Appear*. If the asylum office Director is satisfied that the individual is no longer in the United States, the asylum office does not refer the asylum application to the Immigration Court. If the asylum office Director believes the alien may still be in the United States, the asylum office may refer the asylum application to the Immigration Court.

If the applicant appears at the interview, follow instructions in (2) of this section.

2. Discovering Departure from the U.S. During an Asylum Interview

When an applicant appears for an asylum interview, s/he has overcome INS's presumption of abandonment. The AO questions the applicant about any departure from the U.S. in order to determine if the departure bears on the merits of the asylum claim. The AO also requests a copy of any advance parole document (Form I-512) that was issued by INS.

3. Discovering Departure from the U.S. After an Asylum Interview

An asylum office may learn that an applicant departed the U.S. after the asylum interview, but before a final decision. The asylum regulations provide that an applicant who departs the United States without advance parole, or who returns to the county of claimed persecution may be presumed to have abandoned his or her asylum application. The presumption is rebuttable if an applicant can show compelling reasons for the departure. An asylum office determines whether the applicant has overcome the presumption of having abandoned his or her asylum applicant on a case-by-case basis, taking into account the following factors:

8 CFR 208.8

See Cooper, Bo. INS General Counsel. *Readmission of Asylees and Refugees Without Travel Documents* Memorandum to Michael Pearson, EAC Field Operations (23 November 1999), 8 p.

- Length, purpose and duration of the departure
- Whether the applicant returned to his or her country of feared persecution, and whether there were compelling reasons for doing so
- Whether the applicant has returned or is attempting to return to the U.S.
- Whether the asylum application would have been approved, and if so, whether the applicant engaged in any activities while outside the U.S. that would be inconsistent with asylum status and if s/he voluntarily re-availed him or herself of the protection of his or her country of nationality.

Mere return to one's country of nationality does not mean that the applicant has voluntarily re-availed him or herself of its protection. The asylum officer should consider:

- Whether the return was voluntary;
- Whether the applicant intended to re-avail himself of the protection of his or her country of nationality;
- Whether the applicant actually obtained such protection, including obtaining a passport;
- Whether the applicant re-established him or herself in the country where persecution was feared with a view towards permanently residing there; and
- Whether exceptional circumstances justify the applicant's actions such that a grant of

asylum is still appropriate.

The asylum office has no jurisdiction to grant asylum to an applicant who is not in the U.S. However, the asylum office may be called upon to give input into a decision of whether to allow the re-entry of an asylum applicant into the U.S., necessitating an evaluation of the case using these factors.

RAPS contains a dismissal code for abandonment of the asylum application on the Administrative Closure (CLOS) screen, "CU – Dismissed-Abandoned." This code is only to be used for individuals who have abandoned their claims by departing the United States. If the asylum application is dismissed for abandonment, the asylum office issues the applicant a letter *Notice of Dismissal – Abandonment of Asylum Application* (Appendix A 66). If the individual is in the United States and not in-status, the asylum office concurrently issues charging documents. If the individual is not in the United States, the notice is mailed to both the last known U.S. address and the foreign address, if known.

F. DEPENDENTS

1. Adding a Dependent After P.A.'s Initial Filing

A P.A. may add to his or her asylum application a spouse or child under age 21 at the time of filing, who is in the United States and not under the jurisdiction of EOIR, at any time prior to the rendering of a final decision by the asylum office, regardless of whether the new dependent previously filed for asylum as a separate P.A., or never submitted an asylum application. An individual who was issued a *NOID* or *Final Denial* may become a dependent on a spouse's/parent's asylum claim. A spouse or child may be added to an applicant's asylum claim even after the issuance of a *NOID* or *Recommended Approval* letter to the principal applicant. The addition of a dependent in RAPS will automatically initiate the scheduling of a fingerprint appointment for a dependent over age 14 and under age 75.

See 8 CFR 208.21

"Final Decision" in this context refers to a Final Denial, Referral (with NTA filed on the Immigration Court) or Final Approval.

If a request to add a dependent is received after the issuance of the denial, referral or approval to the principal applicant, asylum office personnel provide the applicant with information about the filing of an I-730, *Asylee/Refugee Relative Petition, which* can be found on the INS web site at http://onlineplus.ins/graphics/howdoi/derasy.htm. An asylum office Director maintains the discretion to issue an NTA for a prospective dependent who is not in valid status.

The burden of proof is on the principal applicant to establish the claimed relationship with the prospective dependent. Details regarding the types of documentation that may be used to establish the principal applicant-dependent relationship in cases pending before INS are discussed in 8 CFR 204.2(a)(1)(i)(B), (a)(2), (d)(2) and (d)(4).

a. Dependent Did NOT Previously File an Asylum Application

i. Adding a dependent before the interview

The P.A. files with the Service Center a packet that includes:

- One (1) copy of his/her asylum application that includes the dependent's information.
- At a minimum, an applicant is permitted to submit copies of only pages 1, 2, 3 (including Supplement A Form I-589 as needed for additional family members), and 9

of the P.A.'s application in lieu of the entire I-589 and supplemental documentation.

- One (1) photograph of the dependent that s/he wants to add, stapled on page 9 of the dependent's copy.
- One (1) copies of evidence of relationship.
- Brief statement that s/he wishes to add a dependent to his/her asylum claim.

The Service Center adds the dependent to the parent or spouse's claim in RAPS using the subcommands on the I589 screen and forwards the file to the asylum office.

ii. Adding a dependent at the time of the interview

A P.A. may add a dependent to his/her asylum claim at the time of the asylum interview, as long as the dependent appears with the P.A. To add a dependent who is present at the interview, the P.A. submits to the AO the same packet described in the previous section.

Asylum office personnel create a file for the dependent according to instructions in Section II(C)(2), *I-589 Filed Directly with the Asylum Office*. Asylum office personnel add the dependent to the P.A.'s case in RAPS. The AO meets and interviews the dependent according to instructions in Section II(J)(3), *AO Conducts An Asylum Interview*, "Dependents."

If the dependent does not appear with the P.A. at the interview, the AO:

Required Material: Form I-72 or office equivalent

- Completes the interview with the P.A.
- Completes Form I-72 or office equivalent, which instructs the P.A. to bring the dependent to the office on a day before the pick-up date if the interview takes place at the asylum office, or before the AO leaves the circuit ride city if the interview takes place away from the asylum office.
- Places the P.A.'s case on HOLD – AD in RAPS. This will stop the EAD clock until the applicant presents the requested dependent.

If the dependent appears on the appointed date and time, the AO follows instructions in (1)(b)(ii) of this section, removes the case from HOLD in RAPS, and processes the family's decision.

If the individual fails to appear on the appointed date asylum office personnel:

- Do not add the individual as a dependent on the P.A.'s claim.
- Write a memo to the P.A.'s file, with a copy in the dependent's file, if any, that states the applicant failed to appear for the appointment.
- Remove the case from HOLD in RAPS
- Process the asylum application of the P.A. for pick-up or mail-out.

iii. Adding a dependent after the interview

A P.A. may submit materials to add a dependent either to the Service Center or to the asylum office that is adjudicating his/her application. Neither the Service Center nor the asylum office will add an individual as a dependent if RAPS indicates the asylum office already issued an *Asylum Approval, Final Denial* or *Referral* to the applicant. Should this occur, the Service Center or asylum office returns the packet to the P.A. with a letter informing him/her that INS cannot add the dependent because a final decision was issued.

If the request to add a dependent is filed with the Service Center and RAPS indicates an interview date in the past, the Service Center forwards the packet to add a dependent to the asylum office for further processing.

Cases Interviewed at the Asylum Office:

If the asylum office receives a request to add a dependent either before the pick-up date, or while the case is pending if the decision will be mailed, asylum office personnel take the following action:

- Place the case on HOLD – AD in RAPS
- Send to the P.A. a *Response to Request to Add Dependent to Asylum Application* (Appendix A 12), which schedules both the P.A. and the dependent for an appointment with an AO. This appointment may be scheduled for the same date as the pick-up appointment if resources permit the completion of all necessary follow-up processing prior to service of the decision on that date.

Asylum Office personnel follow procedures in (1)(a)(ii) of this section for processing guidelines depending upon whether the individual appears or fails to appear at the appointment.

Cases Interviewed at a Circuit Ride location:

If a P.A. was interviewed at a circuit ride location, s/he may not add a dependent to the claim unless the P.A. and dependent are able to appear for an interview. This requirement is due to the asylum office's need to verify the dependent's identity, and relationship to the P.A., etc.

Asylum Office personnel follow procedures in section (1)(a)(ii) of this section for processing guidelines depending upon whether the individual appears or fails to appear at the appointment.

b. Dependent Previously Filed an Asylum Application as a P.A.

There is no statutory or regulatory bar to an individual being both a P.A. and a dependent. An individual who filed an asylum application may wish to withdraw his/her application as a P.A. and become a dependent on a spouse or parent's asylum claim. The choice to withdraw as a P.A. or to pursue an application as both a P.A. and a dependent is the individual's and the P.A.'s, who agrees to include the individual as a dependent. If an individual wants to withdraw his/her asylum application as a P.A. and become a dependent, the following procedures apply. For procedures on individuals pursuing an asylum application as both a P.A. and a dependent, see Section III(F)(3), *Simultaneous Filing as a Principal Applicant and Dependent*.

i. Request to add a dependent received before the asylum interview

The Service Center will not add an individual as a dependent if RAPS indicates that the individual is currently a P.A. Should this occur, the Service Center forwards the packet to the asylum office.

Upon receipt of the packet, asylum office personnel make reasonable efforts to schedule the interview of the parent/spouse of the individual who wants to be added as a dependent, and the dependent who filed a separate I-589, on the same date and time by having them added to the schedule manually. Asylum office personnel also make reasonable efforts to assign both individuals to the same AO for interview. If that is not possible, then the same SAO reviews both decisions for consistency.

ii. Adding a dependent at the time of the interview

A P.A. may request to add a dependent to his/her asylum claim at the time of the asylum

interview. The AO explains to the P.A. and prospective dependent, if present, that it is possible to be a P.A. and dependent simultaneously. If the choice is made to pursue both cases simultaneously, asylum office personnel follow guidance contained at III(F)(3), *Simultaneous Filing as a Principal Applicant and a Dependent.* If the prospective dependent no longer wants to pursue an application as a P.A., the AO may grant the request to add the dependent at the interview as long as the dependent is present. The individual who wants to be added as a dependent provides to the AO a signed statement that s/he wishes to withdraw his/her asylum application. The P.A. provides a brief statement that s/he wishes to add a dependent to his/her asylum claim.

Asylum office personnel locate the dependent's file. The AO completes the section on the I-589 that pertains to information about a spouse or child, so the P.A. does not need to submit a new copy of his/her I-589. If the file contains one (1) photograph of the individual, s/he does not need to submit a new one. The P.A. must submit three (3) copies of evidence of relationship. The AO interviews the dependent according to instructions in Section II(J)(3), *AO Conducts An Asylum Interview*, "Dependents."

Asylum office personnel delete the individual as a P.A. from RAPS using the Delete Case (DELC) command, and add him/her to the P.A.'s claim using the subcommands found at the bottom of the I589 screen.

If the prospective dependent who filed a separate I-589 did not appear at the time of the principal's interview, the principal applicant may be given a brief extension of time to bring his or her dependent and the required materials to add the dependent. If the dependent does not appear, the AO completes the P.A.'s case without adding the dependent.

iii. Adding a dependent after an interview

A P.A. may submit materials to add a dependent either to the Service Center or to the asylum office that is adjudicating his/her application. Neither the Service Center nor the asylum office will add an individual as a dependent if RAPS indicates the asylum office already issued an *Asylum Approval, Final Denial* or *Referral* to the applicant. Should a request to add a dependent arrive after the final decision has been issued, the Service Center or asylum office returns the packet to the P.A. with a letter informing him/her that INS cannot add the dependent because a final decision was issued.

If the request to add a dependent is filed with the Service Center after the interview, the Service Center forwards the packet to add a dependent to the asylum office for further processing.

<u>Cases Interviewed at the Asylum Office</u>:

If the asylum office receives a request to add a dependent either before the pick-up date, or while the case is pending if the decision will be mailed, asylum office personnel take the following action:

- Place the principal's case on HOLD – AD in RAPS
- Send to the P.A. a *Response to Request to Add Dependent to the Asylum Application* (Appendix A 12), which schedules both the P.A. and the dependent for an appointment with an AO.

Asylum Office personnel follow procedures in (1)(b)(ii) of this section for processing guidelines depending upon whether the individual appears or fails to appear at the appointment.

Cases Interviewed at a Circuit Ride location:

If a P.A. was interviewed at a circuit ride location, s/he may not add a dependent to the claim unless the P.A. and dependent are able to appear for an interview. This requirement is due to the asylum office's need to verify the dependent's identity, and relationship to the P.A., etc.

If the dependent appears for an interview, the AO meets and interviews the dependent according to instructions in Section II(J)(3), *AO Conducts an Asylum Interview*, "Dependents," and follows other pertinent procedures in (1)(b)(ii) of this section.

If the dependent is unable to appear, the asylum office schedules the dependent for an interview based on the I-589 s/he filed as a P.A. This interview should take place during the next scheduled circuit ride. Because the individual wants to be considered as both a P.A. and a dependent, the AO delays serving the decision on the spouse's or parent's I-589 pending the interview and decision on the dependent's separately filed I-589. *See* below, this section, subsection 3, *Simultaneous Filing as a Principal Applicant and a Dependent*. Asylum Office personnel place the P.A.'s case on HOLD – AD until the dependent is interviewed.

2. Family Members Filing as Separate Principal Applicants

There is no requirement that a family must submit an asylum application as a family. A husband and wife, or a mother and daughter may each submit separate asylum applications as principal applicants. Each individual is entitled to an interview on his/her application and confidentiality protections as outlined in Section III(D).

3. Simultaneous Filing as a Principal Applicant and a Dependent

There is no statutory or regulatory bar to an individual being both a P.A. and a dependent. An individual may pursue an asylum application as a P.A. and as a dependent on a parent or spouse's asylum claim. However, RAPS is not structured to accommodate the simultaneous claims. Ideally, all family members would appear at the asylum office on the same date for interview. However, RAPS may pick the cases up for scheduling on different dates. If the asylum office is made aware of the cases in time, the family members should be scheduled for interviews on the same date. If an applicant expresses a desire to both file as a principal applicant and ride as a dependent on another applicant's application, asylum office personnel take the following actions:

See Davidson, Christine. *INS Asylum Division. Simultaneous Principal & Dependent Filings of I-589*'s, Memorandum to Maureen Dunn, SAO (Washington, DC: 26 August 1994), 3 p.

- Confirm with all applicants involved that they wish to proceed as principals and that one or all wish to proceed as dependents as well.
- Locate and obtain all A-files.
- If an interview has not yet been conducted, asylum office personnel schedule all individuals for interviews, using the Add Case to Schedule (ADDC) command in RAPS to schedule all individuals on the same date. The same AO should be assigned all the cases where possible.

- If an interview has already been conducted or is underway, but the individual who wishes to proceed as both a dependent and principal has not been scheduled for an interview, asylum office personnel schedule him or her for an interview as soon as possible, using the Add Case to Schedule (ADDC) command in RAPS. The same AO who conducted the previous interview should be assigned to interview the family member(s) whenever possible.
- No decision is to be rendered in any individual case until all principal applicants are interviewed.

Depending on the decision contemplated in each case, asylum office personnel take the following steps:

a. All Applicants Eligible for Approval

- Prepare recommended approvals or final approvals for each individual as a principal applicant.
- Serve decisions on each applicant as a principal applicant.

b. All Applicants Referred or Denied

- Prepare referral or final denial materials, as appropriate.
- Serve decisions on each applicant as a principal applicant.

c. All Applicants Require Notices of Intent to Deny

- Prepare Notices of Intent to Deny.
- Delay all final decisions until all rebuttal periods have expired and final decisions can be processed simultaneously. Final decisions to be processed as indicated in this section.

d. One Applicant Eligible for Approval, Other(s) Not Eligible

If the P.A. whose application merits a grant is eligible to add as a dependent on his or her I-589 the other applicant who would otherwise be ineligible for an approval as a principal applicant, asylum office personnel inform the prospective dependent that s/he is ineligible for an asylum approval as a principal applicant and ascertain from the proposed dependent if s/he wishes to be processed as a dependent on his/her spouse's or parent's claim. If so, the dependent must so indicate in writing. The dependent is not required to withdraw his or her I-589. However, to accommodate the case in RAPS, the dependent's record as a principal applicant must be removed. Asylum office personnel complete the following steps.

If the individual who merits a grant is eligible to add a dependent to his or her application:

- Print all CSTA and CHIS screens for the prospective dependent and place them in his or her file. Do not update RAPS with a decision on the prospective dependent's asylum application.
- Delete the prospective dependent's record as a principal applicant from RAPS.

- Update RAPS to add the dependent(s) to the P.A.'s claim.
- Prepare recommended approvals or final approvals for the family group.
- If the proposed dependent fails to indicate in writing his/her withdrawal for the purpose of becoming a dependent, the proposed dependent remains a P.A. and the decision on his/her application as a principal applicant is then processed on paper (without RAPS updates), including a *NOID* and, if the reasons for denial are not overcome, a *Final Denial*. The applicant is treated as in-status because he or she is being approved for asylum as a derivative.

If the P.A. whose case merits a grant is not eligible to add the other applicant as a dependent (as in the case where the child merits a grant, but the parent does not), each applicant is processed as a P.A.

4. Dependent's Failure to Appear at Asylum Interview

If a dependent included in a principal applicant's initial I-589 filing fails to appear for the asylum interview, AO proceeds with the interview and takes the following action:

- Completes Form I-72 or office equivalent, which instructs the P.A. to bring any missing dependent family members to the office on a specific date and at a specific time. If the AO issues a *Pick-up Notice*, the appointment may be scheduled for the same date as the pick-up appointment if resources permit the completion of all necessary follow-up processing prior to service of the decision on that date.
- Provides the P.A. with the original form and places a copy on the right-hand side of the A-file.
- Informs the P.A. that failure to present the missing dependent will result in the dependent's removal from the application for asylum, and possible referral to the Immigration Court.
- Places the P.A.'s case on HOLD - AD in RAPS. This will stop the EAD clock until the applicant presents the requested dependent. When the dependent appears, asylum office personnel remove the case from HOLD in RAPS.

The P.A. must bring the dependent at the earliest possible time.

a. Dependent Fails to Appear on Appointed Date and Time

If the dependent fails to appear on the date indicated on Form I-72 or office equivalent, asylum office personnel:

- Remove the dependent from RAPS using the subcommands on the I589 screen.
- Place a memo in the A-file of the dependent, with a copy in the P.A.'s A-file that states the dependent was removed because s/he failed to appear for an asylum interview.
- Physically separate the A-file from the principal applicant's.
- Process the dependent's A-file in accordance with the status of the applicant and standards of prosecutorial discretion, as exercised by the asylum office Director (e.g., place the dependent into removal proceedings, forward the file to the component needing to take action on the file, etc.)
- Remove the principal applicant's case from HOLD in RAPS and process the case.

See Meissner, Doris, INS Commissioner. *Exercising Prosecutorial Discretion*, Memorandum to Regional Directors, et al. (Washington, DC: 17 November 2000), 13 p.

b. Dependent Appears on Appointed Date and Time

Once the dependent appears, the AO:

- Verifies the dependent's identity and his/her relationship to the principal applicant.
- Ensures the dependent is not under the jurisdiction of the Immigration Court.
- Ascertains whether any mandatory bars apply.
- Reviews any biographical data on the I-589 that may have been incomplete due to the individual's absence at the asylum interview.
- Removes the case from HOLD in RAPS
- Processes the family's decision.

5. Child Status Protection Act

The Child Status Protection Act (CSPA) amended § 208(b)(3)(B) of the INA with respect to the definition of "child" for asylum applicants as follows:

> "(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN. An unmarried child who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3), if the alien attained 21 years of age after such application was filed but while it was pending."

As a result, unmarried children who turn 21 years of age after an asylum application was filed but prior to adjudication are still considered eligible for derivative asylum status and may remain as dependents on the asylum application. The relevant date to consider in determining whether a dependent who has turned 21 still qualifies as a child for the purposes of eligibility for derivative status is the date on which his or her parent filed an asylum application, at which time the dependent must have been under 21. There is no requirement that the child have been included as a dependent on the application, but the child must have been under 21 on the date the application was filed.

"Filing date" is defined as the date INS received an application. See 8 CFR 103.2(a)(7). The filing date is recorded in RAPS in the FILED field on the CSTA screen. In the event there is a conflict between the date in RAPS and the receipt date stamped on the application, the earlier date is used for CSPA purposes.

OGC has advised that, as long as the asylee adjustment application was pending as of August 6, 2002 (the date of enactment of the CSPA), a derivative child asylee over age 21 should be permitted to adjust without filing for asylum as a principal with a request for a *nunc pro tunc* approval, as discussed below. Therefore, asylum offices will likely see a drop-off of *nunc pro tunc* requests for derivative children. For children over age 21 who are covered by the CSPA but whose *nunc pro tunc* asylum applications are already pending in the asylum offices, asylum office personnel may process them according to the *nunc pro tunc* procedures outlined below.

6. Loss of Derivative Status After Initial Filing but Before Final Decision

A dependent loses his/her eligibility to be included as a dependent on a parent's or spouse's application, if at least one (1) of the following occurs:

- Spouse/child withdraws his/her asylum claim;
- Child marries;

- Spouse divorces P.A.; or
- P.A. dies

a. Loss of Derivative Status by Dependent Withdrawal

A dependent may withdraw his/her asylum application at any time prior to the issuance of a final decision, as described in this Manual, Section III(Y), *Withdrawal Requests*. Depending upon the dependent's immigration status, the asylum office may place him/her into deportation or removal proceedings before an immigration judge. No charging documents are issued if the dependent is withdrawing for the purpose of pursuing his/her own application as a P.A.

See Weiss, Jeffrey L. INS Asylum Division. *Dependents' Requests to Withdraw*, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 11 March 1997), 2 p.

The dependent must request withdrawal in writing, with a copy placed in both the principal and dependent's files. If there is insufficient information in the file to sustain an NTA, asylum office personnel request a signed written statement from the dependent including date, place and manner of entry, or copies of documentation providing sufficient basis to sustain an NTA.

If the dependent requests withdrawal in order to be placed into removal proceedings, asylum office personnel take the following actions:

- Place in dependent's A-file a printout of dependent's "CSTA" screen from RAPS.
- Remove the dependent from the principal in RAPS using the subcommands in the "I589" screen.
- Enter the dependent as a principal in RAPS.
- Use the "CLOS" screen to administratively close the dependent's case as "C3 – APPLIC. WITHDRAWN."
- Enter "Y" in the "SEND TO IJ (Y/N)" field and place an "X" in the "NTA REQUIRED (X)" field.
- Issue charging documents using "OSCG"/"OSCP" screens.

b. Loss of Derivative Status by Marriage, Divorce or Death of P.A.

A spouse or child who becomes ineligible for derivative status cannot remain a dependent on a parent's or spouse's asylum application, and must file an application as a P.A. in order to pursue an asylum claim.

See the AOBTC Basic Training Materials, *One-Year Filing Deadline*.

If the dependent files an I-589 as a P.A., the loss of derivative status qualifies as changed circumstance for the purposes of determining whether s/he is subject to the 1-year filing deadline prohibition, so long as the asylum application was filed within a reasonable time after becoming aware of the loss of derivative status. See 8 CFR 208.4(a)(4).

i. Notifying the P.A. and dependent of ineligibility for derivative status

When INS becomes aware that a dependent is no longer entitled to derivative status, the asylum office notifies the P.A. and the dependent of the dependent's ineligibility for derivative status.

If an AO discovers during an asylum interview that a dependent is no longer entitled to derivative status, the AO verbally notifies the P.A. that the dependent cannot remain on the asylum application and issues the appropriate letter (Appendices A 13 – A15). The letter is served on the principal applicant at the interview, copied for the file, and copied to the dependent by mail or in person, if he or she is present. If the dependent is not present, the AO confirms whether the P.A. is still in contact with the dependent and whether the dependent resides at the same address as the P.A. If the dependent is not present at the

asylum office and no longer resides at the same address, the AO obtains the dependent's current address from the P.A. (if known), and mails the letter, with an accompanying Form I-589 packet, including legal service provider list. If the P.A. does not know the dependent's current address or the dependent continues to reside with the P.A., the AO mails the packet to the dependent's last known address.

If INS discovers an individual's ineligibility for derivative status outside of an asylum interview, the asylum office sends the appropriate letter regarding the removal of the dependent (Appendices A 13 – A 15), with an accompanying Form I-589 packet to the P.A. The asylum office also sends a copy of the letter and a Form I-589 packet to the dependent and representative of record, if any, even if the P.A. and dependent live at the same address. If the loss of derivative status results from the death of a P.A., asylum office personnel send the letter only to the dependent and any representative of record.

ii. Loss of derivative status after issuance of Recommended Approval

In addition to notifying the P.A. and a dependent of a loss in derivative status, the letters cited in (2)(b)(i) of this section also cancel any recommended approval that was previously issued to the dependent. Because a grant of asylum to a parent or a spouse may be considered strong evidence in support of the claim of the dependent who lost derivative status, particularly after the office issued a *Recommended Approval* letter, an asylum office Director has the discretion to not interview the dependent after s/he files an I-589. Whether or not the asylum office interviews the dependent, the *Recommended Approval* letter remains in the dependent's file, marked "CANCELLED ON [DATE] DUE TO [MARRIAGE, DIVORCE, ETC.], and placed on the non-record side.

iii. Updating RAPS to reflect loss of derivative status

Asylum office personnel delete the dependent from RAPS using the subcommands at the bottom of the I589 screen, or use the New Case (NEWC) command, which makes a dependent into a P.A. Asylum office personnel may only use the NEWC command if the individual files an I-589 prior to his/her removal from RAPS as a dependent.

7. Loss of Derivative Status After *Asylum Approval* but Before Adjustment of Status

In order to derive LPR status from a P.A. who was granted asylum status, a derivative asylee must continue to meet the definition of a spouse or child at the time INS adjudicates the adjustment application. If the derivative asylee no longer meets the definition of spouse or child, s/he may not adjust his/her status to that of a lawful permanent resident. Although an individual may lose his/her ability to adjust status as a derivative asylee meeting the definition of "spouse" or "child", once asylum status is granted, an individual does not lose asylee status even if a principal/dependent relationship ends, unless INS or EOIR formally terminates asylum. The Asylum Program accepts new I-589 applications from these former dependents as principals under special procedures in order to create an avenue for individuals who have been recognized as asylees the ability to adjust status.

The definition of "child" is found at INA § 101(b). The definition was affected by the Child Status Protection Act (CSPA). For more information on the CSPA, see this section, above, at subsection (5).

The processing of a former dependent's I-589 does not vary depending upon how the individual lost derivative status (i.e., death of P.A., marriage, or divorce). These procedures apply to all dependents who are no longer eligible for derivative status regardless of whether they were granted asylum status by an asylum office or immigration judge, or entered the U.S. as an asylee pursuant to the approval of a Form I-730, *Refugee/Asylee Relative Petition*.

a. Filing an I-589 and Interview with an AO

The dependent who lost derivative asylum status files a Form I-589 directly with the asylum office having jurisdiction over his/her place of residence. If the asylum office did not grant asylum status, the individual's A-file should contain an IJ order granting asylum to the individual (either as an individual or as a member of a family unit), or an approved Form I-730. At the time of the interview, the individual should present positive identification and evidence of his/her asylee status, such as an endorsed I-94 card.

Asylum office personnel locate the former dependent's A-file, and perform the necessary RAPS updates/changes to make the dependent a P.A. in the system. This may include adding the case to RAPS if the individual received asylee status pursuant to an approved I-730 Petition.

If the former dependent received asylee status pursuant to an I-730, the filing date entered in RAPS will be the date the dependent entered the U.S., or the date of the grant of the I-730, whichever is later. An "X" is placed in the applicable NUNC PRO TUNC field on the I589 screen, depending on whether the applicant attained derivative status from the asylum program ("INS"), EOIR ("IJ"), or through the filing of an I-730 ("I-730").

The approval of an I-730 does not confer asylee status unless and until the beneficiary is present in the United States.

If the asylum office granted the dependent derivative status, the Create New Case for Dependent (NEWC) command may be used in RAPS to convert the former dependent into a principal record in RAPS. If the former dependent now lives in the jurisdiction of an asylum office other than that which made the prior decision in the case, asylum office personnel coordinate with the owning office to complete the necessary RAPS commands. Asylum office personnel:

- Convert the dependent to a principal applicant using NEWC.
- Enter an "X" in the NUNC PRO TUNC field on the I589 screen next to INS, IJ, or I-730, as appropriate.
- Update the Reset Interview (REIN) command to clear the case decision and interview data.
- If applicable, update the address on the Address Change (MOVE) screen.
- If applicable, transfer the case to the new asylum office on the Case Transfer (TRAN) screen.

An AO conducts an interview with the former dependent to verify the individual's identity and ensure that s/he is physically in the U.S. The AO must also ascertain that the individual is not under the jurisdiction of the Immigration Court and no mandatory bars to asylum eligibility apply. Unless circumstances in the next section are present, a former dependent does not need to independently establish his/her eligibility for asylum, so an AO does not review the asylum claim at the time of the interview.

b. Discretion to Interview on the Merits of an Asylum Claim

There is a presumption that the individual who lost derivative status is eligible for a grant of asylum on his/her own; however, an asylum office Director has the discretion to interview an individual on the merits of the asylum claim, if s/he believes the individual may not be entitled to a grant of asylum as a P.A. Examples include but are not limited to:

- An individual who is a national of country different from the P.A., and does not appear to have a fear of harm in that country (e.g., a national of France or Canada).
- An individual who never lived with the P.A.

- An individual whose spouse/parent appears to have derived asylum through fraud, but that spouse/parent's asylum status has not been terminated.

At the direction of the asylum office Director, the AO conducts a full interview on the merits, according to procedures outlined in Section II(J), to determine the individual's eligibility for asylum status. In the case of an individual who has an adverse history that does not meet the requirements of a mandatory bar, the AO must explore and balance the positive and negative discretionary factors. These factors are weighed and, if the negative factors outweigh the positive factors, asylum may be denied as a matter of discretion.

c. Granting Asylum *Nunc Pro Tunc*

An asylum office may grant asylum *nunc pro tunc* to a date in the past. This date depends upon whether the individual was granted asylum as a dependent on an I-589 that was filed with either INS or EOIR, or entered the U.S. or was granted derivative asylee status pursuant to an approved Form I-730.

- If either INS or EOIR granted the individual derivative asylum status, the asylum office grants asylum *nunc pro tunc* to the date of the P.A.'s asylum approval (which should also be the date of the individual's original asylum approval as a dependent).
- If the individual entered the U.S. pursuant to an approved Form I-730, the asylum office grants asylum *nunc pro tunc* to the date of the individual's entry into the U.S.
- If the individual obtained derivative asylee status pursuant to an approved Form I-730 while in the United States, the asylum office grants asylum *nunc pro tunc* to the date of the approval of the I-730.

All required background identity and security checks must be current and complete and allow for approval prior to any asylum approval, including a *nunc pro tunc* asylum approval. Asylum office personnel follow instructions in Section III(L) for completing and documenting background identity and security checks. A recommended approval need not be issued to the former dependent pending the completion of the checks, as s/he still maintains derivative asylee status. Upon receipt of the results of the background identity and security checks, follow instructions below, depending upon the type of response that is received.

If the results allow for an approval, and they have not expired, asylum office personnel:

- Document all background identity and security checks in the file and RAPS as required in this Manual or subsequently issued procedures.
- Prepare an *Asylum Approval – Nunc Pro Tunc* letter (Appendix A 16) and an accompanying I-94 card.
- Serve the documents and prepare the case for post-service processing according to the instructions for approvals in Section II(R)(3).

If the results allow for an approval, but they have expired, follow instructions in Section III(L) on obtaining updated identity and security checks.

If the results do not allow for an approval, follow instructions in (3)(d) of this section.

d. Individual is Ineligible for a Grant of Asylum *Nunc Pro Tunc*

If the former dependent is ineligible for an approval of asylum *nunc pro tunc* as a P.A. due to a criminal record or mandatory bar, the AO:

- Follows any applicable procedures in this Manual related to the mandatory bar.
- Prepares a *NOID*, because as an asylee, s/he is considered to be in a valid status.
- If the Service granted the former dependent's asylee status and the evidence that makes the dependent ineligible for a final approval constitutes a ground for termination under 8 CFR 208.24, the AO initiates termination of the former dependent's asylee status as described in Section III(X) of this Manual. See below for guidance on initiating termination of asylum if EOIR granted the former dependent's asylee status.
- Submits the *NOID* and *Notice of Intent to Terminate Asylum Status (NOIT)* for HQASM/QA review before it is issued to the former dependent. (See Section III(S) for procedures for sending a QA referral packet for review).
- Notifies Investigations or Detention & Removal (according to local practice) that termination of asylum proceedings have been instituted against the dependent. The notification includes the applicant's criminal convictions, name, date of birth, A-number, and current address, where applicable, and a note explaining that either the asylum office will provide notification that asylum has been terminated and an NTA is being issued or that an NTA is being issued for litigation of the termination question before an IJ. Document notification and response in the file.

If EOIR granted the former dependent's asylee status and the evidence that makes the dependent ineligible for a final approval constitutes a ground for termination under 8 CFR 208.24, the asylum office does not have jurisdiction to terminate the asylee status. The asylum office Director maintains discretion to coordinate with local District Counsel to request and assist in the preparation of a Service *Motion to Reopen* before the Immigration Judge, after the completion of asylum office action in the former dependent's case.

If the individual is found eligible for asylum status as a P.A. after the *NOID* rebuttal period, follow instruction in (3)(b) of this section on granting asylum *nunc pro tunc*. If the asylum office also issued a *NOIT*, the asylum office also issues Appendix A 41, *Notice of Continuation of Asylum Status.*

If the individual fails to present a rebuttal, or fails to present evidence to overcome the reasons for denial, an AO prepares a *Denial of Asylum Status as a Principal Applicant* (Appendix A 17). Asylum office personnel serve the letter according to the instructions for *Denials*, except that if there is a concurrent termination proceeding, the denial letter is held and served under the same cover as the termination notice.

If the asylum office issued the *NOIT,* the asylum office completes the termination interview and termination according to Section III(X) of this Manual, with the exception of the RAPS entries.

RAPS is updated as follows:

- For denials as a principal without termination of the derivative asylee status, RAPS should reflect PDEC and FDEC decision codes of D2 (criminal), D3 (persecutor, security risk, or terrorist), D4 (other not eligible), or D7 (failure to comply with fingerprint processing requirements); and a deportation code of A6 (no deportation). Asylum office personnel ensure that the COA field in CIS continues to reflect the valid derivative asylum status ("AS2" for spouse, "AS3" for child).
- For denials as a principal with concurrent termination of the derivative asylee status, RAPS should reflect PDEC and FDEC decision codes of D2 (criminal), D3 (persecutor, security risk, or terrorist), D4 (other not eligible) or D7 (failure to comply with fingerprint processing requirements); and a deportation code of A1 (NTA required). OSCG and OSCP are used to generate an NTA. Asylum office personnel follow guidance below in Section III(X)(5)(d), *Asylum Office Terminates Asylum Status,* in preparing the NTA. Asylum office personnel with CIS access update the COA field with "ASR" (Asylum Status Revoked) in CIS to show that asylum status was terminated.

e. Dependents with Spouses or Children

A derivative asylee applying for a grant of asylum as a principal *nunc pro tunc* may not include dependents in his/her application or petition for them on an I-730, *Refugee/Asylee Relative Petition*. If the former dependent has a spouse and/or child s/he wishes to be included in his/her grant of asylum, s/he must file a regular principal asylum application and be interviewed on its merits. If approved, the approval cannot be dated back to the original date of the grant of derivative status.

8. Effect of P.A.'s Administrative Closure on a Dependent's Claim

If a P.A. is under the jurisdiction of the Immigration Court, or had a prior order reinstated by the District Director (DD), the asylum office must administratively close the asylum application. This closure also affects the derivative asylum application of any dependent, even if the dependent is not under the jurisdiction of the Immigration Court or subject to a prior order. The dependent may submit an I-589 to pursue asylum in the U.S., as long as INS has jurisdiction to hear the asylum claim. Principles of prosecutorial discretion, as exercised by the asylum office Director, apply in determining whether to place into removal proceedings a dependent who is not maintaining lawful immigrant, nonimmigrant, or Temporary Protected Status.

See Meissner, Doris, INS Commissioner. *Exercising Prosecutorial Discretion*, Memorandum to Regional Directors, et al. (Washington, DC: 17 November 2000), 13 p.

9. "Split Decisions"

A "split decision" occurs when the asylum office is unable to issue the same type of documents to each individual in a family unit because one (1) of the scenarios applies:

See Section III(Q)(3) on dependents who are parolees, when the P.A. not a parolee.

- The P.A.'s immigration status is different from a dependent's immigration status and the P.A. is ineligible for an asylum approval.
- The P.A. is eligible for asylum but a dependent is subject to a bar described in 8 CFR 208.21(a).
- The P.A. is eligible for asylum but the dependent fails to follow requirements for fingerprint processing.

This section provides guidance on how to process "split decisions." A Quick Reference Table, including instructions for RAPS updates, for split decisions is provided in Appendix A 61.

a. Approvals

If a P.A. is found eligible for asylum, but the dependent is subject to a bar described in 8 CFR 208.21(a), then the dependent cannot be granted asylum. A dependent also cannot be granted asylum if s/he is under the jurisdiction of EOIR or failed to follow requirements for fingerprint processing. The AO must issue to the P.A. a *Denial of Derivative Asylum Status* (Appendix A 19) letter. This letter must include the A-number of the P.A. and the A-number of the dependent who is being denied derivative asylum status, but not the A-numbers of any other dependents included in the asylum application. An asylum office Director has prosecutorial discretion to place a dependent before the Immigration Court if the dependent is deportable or removable. Among the factors to be considered are 1) the likelihood the Immigration Court that would have jurisdiction over the removal proceedings would accept the charging documents as sufficient to institute proceedings, 2) the age of the dependent(s), 3) whether the dependent has an application upon which he or she would be able to seek relief in front of the immigration judge, 4) whether the dependent has a criminal record, and 5) office resources.

b. Referrals

This section applies to cases where the P.A. is referred to the Immigration Court, either because s/he is ineligible for asylum status or ineligible to apply for asylum, but the dependent cannot be referred along with the P.A. because of the dependent's status.

i. Dependent is in a valid status or parole is not terminated

The AO uses the standard *Referral Notice*; however, the name and A-number of the dependent is *not* included on the *Notice*. The AO also inserts the following paragraph directly before the paragraph on employment authorization, or if the application was filed before January 4, 1995, directly before the closing salutation:

> "Because your **[spouse/child], [Name], [A-number]**, who was listed on your asylum application as a dependent, does not appear deportable or removable, we are not placing him/her in immigration court proceedings along with you."

ii. Dependent is under the jurisdiction of EOIR

The AO uses the standard *Referral Notice*; however, the name and A-number of the dependent is *not* included on the *Notice*. The AO also issues a *Notice of Denial of Derivative Status* (Appendix A 19).

c. Final Denial

This section applies to a P.A. who is being issued a *Final Denial* letter, either because s/he is in a valid status.

i. Dependent is removable or parole is to be terminated

If the P.A. is in valid status but the dependent is removable or parole will be terminated, the AO issues to the P.A. the standard *Final Denial* letter, with the A-number of the dependent listed on the letter. See section III(Q)(3), *Dependents who are Parolees* for guidance in such cases. An asylum office Director has prosecutorial discretion to place a dependent before the Immigration Court if the dependent is deportable or removable. Among the factors to be considered are 1) the likelihood the Immigration Court that would have jurisdiction over the removal proceedings would accept the charging documents as sufficient to institute proceedings, 2) the age of the dependent(s), 3) whether the dependent has an application upon which he or she would be able to seek relief in front of the immigration judge, 4) whether the dependent has a criminal record, and 5) office resources. If there are serious concerns for considering the dependent a danger to the U.S. community based on criminal convictions or a threat to the security of the U.S. (e.g.,

terrorist activity), the Director should exercise discretion to place the dependent in removal proceedings.

ii. Dependent in a valid status or parole is not and will not be terminated

A P.A. who was paroled to apply for asylum, but is found ineligible for asylum is issued a *Final Denial – Parole* letter (Appendix A 58). If the dependent is in a valid status or maintains valid parole, the name and A-number of the dependent are *not* included on the *Final Denial* letter. The AO also inserts the following paragraph directly before the paragraph on employment authorization:

> "Because your **[spouse/child], [Name], [A-number]**, who was listed on your asylum application as a dependent, does not appear deportable or removable, we are not placing him/her in immigration court proceedings along with you."

10. Dependent Subject to Reinstatement

If a dependent appears to be subject to reinstatement of a prior removal, deportation or exclusion order, asylum office personnel coordinate with the District Director (DD) for a determination of whether the order will be reinstated. While this determination is being made, the asylum office may continue processing the case. If the application will be denied or referred, the decision may be processed, with a memorandum to the file indicating that the file is being reviewed by the DD for possible reinstatement of a prior order. A final approval cannot be issued until the determination is made whether to reinstate the order. Asylum office personnel may issue a recommended approval pending the determination by the DD. To determine whether a dependent may be subject to reinstatement of a prior order, refer to procedures below in Section III(U)(1), *Determining Whether an Applicant is Subject to Reinstatement of a Prior* Order.

If the DD reinstates the prior order, asylum office personnel remove the dependent from the principal's application and issue a *Denial of Derivative Status* letter along with the applicable decision letter to the principal applicant.

11. Dependent Subject to Mandatory Bar to Asylum

Most mandatory bars to a grant of asylum apply independently to any spouse or child who is included in an asylum applicant's request for asylum. 8 CFR 208.21(a) (*referring to* INA § 208(b)(2)(A)(i)-(v) for applications filed on or after April 1, 1997, or under 8 CFR 208.13(c)(2)(i)(A), (C), (D), (E), or (F) for applications filed before April 1, 1997). The mandatory bars that apply independently to dependents are persecution of others, conviction of a particularly serious crime, commission of a serious nonpolitical crime, security risk, and terrorist – all bars other than firm resettlement. In some instances, a principal applicant may be granted asylum and a dependent denied or referred because he or she is subject to a mandatory bar.

When an asylum office learns that a mandatory bar applies to a dependent, the asylum officer interviews the dependent in sworn statement/Q&A format. *See* this Manual, Part II, Section J(9), *Note-taking by the AO During an Asylum Interview*; Asylum Officer Basic Training Materials, *Interviewing Part II: Note-Taking*. If the evidence indicates that a ground for mandatory denial or referral exists, then the applicant has the burden of proving by a preponderance of the evidence that the ground does not apply. For substantive information on the application of mandatory bars, see Asylum Officer Basic Training Materials, *Mandatory Bars to Asylum and Discretion*.

If, after the interview, it is determined that the dependent is subject to a mandatory bar, the asylum officer:

- Writes a memorandum to the P.A.'s file (with a copy to the dependent file), outlining the evidence that indicates a bar applies to the dependent.
- Follows procedures in Section III(B)(14), *National Security Matters, Including Known or Suspected Terrorists and Human Rights Abusers*, where applicable.
- Notifies via memorandum Investigations or Detention & Removal (according to local practice) of name, date of birth, A-number, current address, and relevant convictions of dependent subject to a bar due to criminal activity.
- Processes the case:
  - as a "split decision" in accordance with Section III(F)(9)(a), above, if the P.A. is eligible for an asylum approval;
  - as a referral in accordance with Section II(N)(2)(b), above, if the P.A. is being referred to the IJ;
  - as a NOID or final denial in accordance with Section II(N)(2)(c) or (d), above, if the P.A. is not eligible for asylum, but maintains a lawful status.
- Follows any local procedures requiring coordination with District Counsel.

G. EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)

1. Pre-reform Cases

An applicant, who submitted an asylum application prior to January 4, 1995, was eligible to apply for employment authorization at the time the asylum application was filed, and employment authorization was granted if the asylum application was found not frivolous. The document, referred to as an Employment Authorization Document ("EAD"), is renewable in one-year increments indefinitely so long as the asylum application remains pending or if asylum status is granted.

2. Reform Cases

INA § 208(d)(2); 8 CFR 208.7

Asylum reform was designed to separate the issuance of an EAD from the submission of an asylum application. An applicant may not apply for an EAD until an asylum application has been pending for 150 days or the applicant has received a recommended approval or final approval of asylum. The INS has 30 days from receipt to adjudicate the EAD application and cannot issue an EAD until the asylum application has been pending and 180 days.

This 180-day period is referred to as the 180-day clock ("KLOK"). Both the asylum program and EOIR have a target number of days to adjudicate an asylum application within the 180-day KLOK:

a. Asylum Program Time Frame

To sustain the timeliness goals of asylum reform, it has been the aim of the Asylum Division to adjudicate referrals of asylum applications filed on or after January 4, 1995 and pending within the jurisdiction of a local asylum office within 60 days from the date a complete application was filed with INS. This "60-day referral clock" is counted from the date INS accepts the application as complete (filing date in RAPS) until the asylum office serves an NTA on the applicant as evidenced by the updating of the OSSE screen in RAPS, less any stoppages of the clock due to delay requested or caused by the applicant. *See* AOBTC Lesson Plan *Corps Values and Goals.*

b. EOIR Time Frame

Once an asylum office refers an application to the Immigration Court, the court has the remainder of the 180 days to adjudicate the asylum application before the applicant may be granted employment authorization. An applicant may apply for an EAD immediately if an immigration judge approves the asylum application, even if this occurs before expiration of the 150-day period.

3. 180-Day Clock

Section 208(d)(2) of the INA provides that, unless the applicant is otherwise eligible for employment authorization, employment authorization cannot be granted on the basis of a pending asylum application prior to 180 days after the date the asylum application was properly filed. The 180-day clock remains running unless the applicant's actions cause an interruption or delay in the processing of the application (e.g., failure to appear for the interview or pick-up appointment, failure to provide a competent interpreter, resulting in a rescheduling of the asylum interview, etc.). The Clock Query (KLOK) screen in RAPS indicates how long the clock has been running, any the stoppage (tolling) of the clock that has occurred (tolling) at any time in the process, and the earliest possible date the applicant is eligible to apply for an EAD. See *Impact of RAPS Actions on the "KLOK"* (Appendix A 20) for further information. Although the applicant cannot be granted an EAD before 180 days have passed, the applicant may apply after 150 days have passed, to give the Service time to process the EAD application. If the asylum application is denied between the 150th and 180th days, the EAD application must be denied.

4. Employment Authorization of Asylees

Asylees are authorized to work in the United States incident to asylum status. In order to work in the United States, every employee must show to a prospective employer certain documentation as proof of employment authorization. That proof may consist of, among other things, an unrestricted social security card and a state-issued driver's license. It may also consist of an unexpired employment authorization document (EAD) issued by INS. Asylum offices issue EADs to individuals granted asylum by INS. Guidance on this topic will be added to this Manual at a later date. For current guidance, see Langlois, Joseph E. INS Asylum Division. *Implementation of Section 309 of the Enhanced Border Security and Visa Entry Reform Act (BSA) at Asylum Offices* Memorandum to Asylum Office Directors, et al. (Washington, DC: 6 November 2002).

For a list of all documents that can be accepted by an employer as proof of employment authorization, consult the INS Form I-9, *Employment Eligibility Verification,* available on the INS web site at www.ins.usdoj.gov/graphics/formsfee/forms/i-9.htm.

H. EXTENSIONS OF NONIMMIGRANT STAY

An applicant may submit an application to the Service Center to extend his/her period of nonimmigrant stay on either Form I-539 or Form I-129 (depending upon the type nonimmigrant status). This application can be made either before or after submission of an I-589.

8 CFR 208.14(c)(1) requires the issuance of charging documents to an alien who appears deportable, excludable or removable and is ineligible for a grant of asylum. Therefore, an asylum office must refer to the Immigration Court applicants who are found ineligible for asylum status and whose periods of nonimmigrant stay have expired, regardless of whether the applicants have applications to extend their authorized periods of nonimmigrant stay pending with INS. This referral should occur even if the applicant submitted the application to extend his or her period of authorized stay timely (before the nonimmigrant stay expired) and the applicant did not otherwise violate the terms of his or her status.

The fact that an applicant has applied for an extension of nonimmigrant stay does not prevent INS from placing the individual in proceedings before the Immigration Court. Therefore, AOs treat such individuals as out-of-status when their authorized periods of stay have lapsed for purposes of scheduling a pick-up and processing a referral rather than a denial, if the applicant is ineligible for asylum. It is recommended that asylum office personnel check CLAIMS before concluding that an extension has not been granted, as the request to extend may have been approved by INS, but the applicant has not yet received notice.

I. EXTENSIONS TO SUBMIT DOCUMENTATION

1. Requested by Applicant at Conclusion of Interview

If the applicant requests additional time to submit evidence after an asylum interview, or if the applicant failed to submit the required certified translations of documents or evidence of relationship to dependents included in the application, the AO may, in his/her discretion, grant a brief extension of time after consultation with the SAO. The SAO determines the length of the extension, taking into consideration the type of documentation the applicant wishes to submit. When appropriate, the SAO takes into account any extensions granted to the applicant in submitting documentation for purposes of measuring the AO's timeliness in completing the case. The AO issues either a *Pick-up Notice* or *Mail-out Notice* according to instructions by the SAO.

If the applicant is granted an extension, the AO completes a Form I-72 or office equivalent, listing the documents the applicant must submit. The AO gives the original to the applicant as a receipt, and places a copy on the right-hand side of the file.

The AO informs the applicant that his/her request to submit additional evidence or the granting of additional time to obtain required documentation will toll the EAD clock. To toll the clock, asylum office personnel place the case on "HOLD –AD" in RAPS until the applicant submits the documents. When the documents are submitted, the AO removes the case from HOLD so the EAD clock may resume. The AO reviews and considers timely submitted documentation in preparing his or her decision.

If the applicant fails to submit the documents by the requisite date, the AO removes the case from HOLD and processes the decision.

2. Requested by AO at Conclusion of Interview

The AO may request that an applicant submit additional, reasonably available corroborating documentation as evidence in support of the asylum claim. Because of time constraints a request for documents should only be made when both the AO and SAO determine that the documentation impacts upon the decision.

The SAO determines the length of time the applicant is given to submit the requested materials, taking into consideration the type of documentation INS is requesting. The AO issues either a *Pick-up Notice* or *Mail-out Notice* according to instructions by the SAO.

The AO completes a Form I-72 or office equivalent, listing the documents to be submitted by the applicant. The AO gives the original to the applicant as a receipt, and places a copy on the right-hand side of the A-file.

Form Required: I-72 or office equivalent

Because credible testimony may be sufficient to sustain a burden of proof and the AO is requesting the submission of documents that the asylum applicant might not have foreseen necessary, the clock is **not** tolled, and the AO does NOT place the case on "HOLD – AD" in RAPS. Only the asylum office Director may, in the exercise of discretion, toll the clock pending the receipt of corroborating documentation requested by an AO.

3. Requested by Applicant after Service of *NOID*

The AO has discretion to grant a reasonable extension of time, generally no more than 30 days, to an applicant or representative who requests an extension to prepare a rebuttal. A request for an extension should only be denied if repetitive or abusive. The AO must send written notification to both the P.A. and the representative, if any, if a request for an extension is denied. If the request for an extension is granted pursuant to a telephonic request, the AO must document the file with the amount of time that was granted and the expiration date. RAPS is updated to stop the clock during the extension, using HOLD code AD-Awaiting Documentation.

J. FAILURE TO APPEAR

1. Asylum Interview – Applicant Submits Excuse

Asylum office personnel update RAPS using the No Show (NOSH) command, to reflect that an applicant failed to appear for a scheduled interview. The updating of RAPS occurs within one (1) working day of the applicant's failure to appear for his/her asylum interview.

As a matter of Asylum Division policy, an applicant has (15) calendar days after the date of the scheduled interview to submit an excuse for his/her failure to appear for the asylum interview. An applicant's excuse for a failure to appear at an asylum interview is considered a request to reschedule an asylum interview. The excuse may include a change of address that transfers jurisdiction to another asylum office.

See Section III(A) on changes of address.

a. Excuse Submitted before Issuance of a Referral

The asylum office treats any written excuse received before the issuance of a referral as a request to reschedule the interview. The asylum office processes the case according to procedures for reschedule requests that are outlined below in Section III(V).

b. Excuse Submitted after Issuance of a Referral

Once the asylum office serves a charging document on the applicant and with the Immigration Court, the asylum office loses jurisdiction over the asylum application. Any excuse for failure to appear that the asylum office received after a referral are reviewed by the asylum office Director for a determination of whether lack of proper notice or exceptional circumstances have been established. Failure to appear must be excused if notice of the interview was not mailed to the applicant's current address and that address had been provided to the Office of International Affairs prior to the date the notice was mailed, or if the applicant demonstrates that the failure to appear was due to exceptional circumstances. Exceptional circumstances are defined in INA § 240(e)(1) as "exceptional circumstances (such as serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien."

If lack of proper notice or exceptional circumstances are established prior to EOIR's making a final determination on the merits of the asylum claim, the Director must coordinate with District Counsel to terminate proceedings. If the asylum office's error caused the entry of an *in absentia* removal order against the applicant, the asylum office Director coordinates with District Counsel for an INS Motion to Reopen for termination of proceedings. Asylum office personnel reopen the case in RAPS using the REOP command, entering a "Y" in the "REVERSE A NO-SHOW CLOSE IN ERROR" field. The applicant is then set for a new interview in accordance with the asylum office's scheduling priorities.

c. Excuse Submitted after an Administrative Closure of the Asylum Application

After the asylum office administratively closes an application, it may be reopened at the request of either INS or the applicant if jurisdiction has not transferred to EOIR and at least one (1) of the following scenarios applies:

- INS made an error in closing the case. An example is when an applicant submits a change of address to INS prior to the date the asylum office mails the *Interview Notice*. If the INS made an error in notifying the applicant, the case must be re-opened and set for a new interview. *See* 8 CFR 208.10.
- RAPS may automatically reopen an asylum application if the applicant applies for employment authorization.
- The applicant writes a letter to the asylum office asking to reopen his/her asylum application. The asylum office Director has the discretion to re-open a case for good cause, but re-opening is mandatory where the applicant establishes exceptional circumstances. See 8 CFR 208.10, INA § 240(e)(1).

To reopen a case in RAPS, asylum office personnel update the Reopen (REOP) screen, answering "Y" to the question "REVERSE A NO-SHOW CLOSE IN ERROR" if the asylum office closed a no-show case in error. This removes the stoppage of the EAD clock.

RAPS will automatically place the file in the appropriate priority category for interview scheduling purposes.

2. Asylum Interview – Applicant Fails to Submit Excuse

An applicant may fail to submit an explanation for his/her non-appearance at an asylum interview. Before an assumption is made that the applicant chose not to proceed with his/her asylum request, asylum office personnel determine whether the applicant's failure to appear was caused by the applicant or by INS.

a. Caused by the INS

The asylum office reschedules an interview after a failure to appear caused by the INS if at least one of the following scenarios applies:

- The file does not contain a copy of the applicant's *Interview Notice*.
- The file contains a properly executed Form G-28, but RAPS is not updated to include the representative's correct information and code.
- The INS received notification of a change of address prior to the issuance of the *Interview Notice*, but failed to update RAPS before the Notice was issued .
- The address in RAPS is not correct in that an apartment number is missing, or the street is misspelled, etc.
- The *Interview Notice* is unreadable.

To reschedule a case:

See Section III(V) on rescheduling asylum interviews.

- Update the Remove Case from Schedule (REMC) screen, indicating that rescheduling is at the fault of INS.
- Update Attorney/VOLAG (REPR) screen, if necessary.
- Update the Address Change (MOVE) screen, if necessary.

A rescheduling at the fault of INS is not counted against the applicant when determining whether any future request to reschedule meets the "good cause" requirement.

b. Caused by the Applicant

A failure to appear may be deemed caused by the applicant if all of the following are present:

- The file contains a copy of the applicant's *Interview Notice*.
- If the file contains a properly executed Form G-28, RAPS is updated to include the representative's correct information and code.
- The address in RAPS at the time of interview scheduling was the most recent as provided by the applicant at the time.
- The address on the applicant's *Interview Notice* matches the address in RAPS, and does not contain a missing apartment number, or misspelling of a street name, etc.
- The *Interview Notice* is readable.

i. Applicant is a parolee

If the applicant who failed to appear was paroled, asylum office personnel take the following actions:

- Update the Admin Close Update (CLOS) screen, indicating that the application is closed for interview failure to appear (C5).
- Review the appropriate part of section III(Q) to determine whether parole remains valid, whether charging documents will be issued, and, if so, what type. If parole remains valid, process the case in accordance with section (iii), below. If parole is being terminated, insert the following language after "You failed to appear…" on the referral letter:
  "Enclosed please find a Notice to Appear (Form I-862), which constitutes written notice of termination of your parole status [8 CFR 212.5(d)(2)(i)], and which places you under removal proceedings."
- Contact HQASM for processing individuals who were paroled into the U.S. on or after April 1, 1997, who are inadmissible to the U.S. under sections 212(a)(6)(c) or 212(a)(7) of the Act, and who failed to appear for an asylum interview.

ii. Applicant is deportable or removable

If the file contains sufficient evidence of an applicant's deportability, the asylum office refers the application to the Immigration Court. Asylum office personnel:

- Update the Admin Close Update (CLOS) screen, indicating that the application is closed for an interview no-show (C5).
- Indicate on the CLOS screen that the asylum office will issue an NTA/referral (Place "Y' in the "Send to IJ " section and an "X" in the "NTA Required" section).
- Prepare the case as a referral.

iii. Applicant is in a valid status or the file does not contain sufficient evidence of inadmissibility or deportability

The asylum office administratively closes the application according to the following instructions:

- Update the Admin Close Update (CLOS) screen, indicating that the application is closed for an interview no-show (C5).
- Indicate on the CLOS screen that the asylum office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- Local asylum office policy dictates whether the asylum office retains the file or sends it to the NRC.

3. Pick-up Appointment

If a P.A. or dependent 14 years old or older fails to pick-up the decision after being given a *Pick-up Notice,* asylum office personnel update the Pick-up No-Show (PUNS) screen for each individual on the case who fails to appear. The EAD clock stops as of the pick-up appointment date once RAPS is updated. The decision is then mailed to the applicant.

K. FILE MANAGEMENT

Asylum office personnel enter all A-files, T-files, and W-files into RAFACS when the asylum office receives them from another location or office personnel create them within the records section.

1. Multiple A-Numbers

During the processing of a case, an AO may discover that the applicant has more than one A-number. With the exception of a Legalization/SAW file, the AO must request the additional files(s). The additional file(s) may contain information previously not available to the AO that helps to establish the applicant's alienage and deportability, or his/her eligibility to file an affirmative asylum application. The file(s) may also contain information that pertains to the asylum claim.

Legalization A-files are **not** requested or reviewed. See Section III(B)(9) for more information.

The AO may refer to information contained in another non-Legalization/SAW file pertaining to the applicant and develop lines of questioning during the asylum interview based on that information, if relevant. This information may be used in credibility determinations if it is material to the asylum claim.

a. Consolidating Multiple A-files

If at least two A-files exist for one applicant, INS consolidates the A-files. Local asylum office policy dictates who is responsible for file consolidation. Prior to consolidating the A-files, a thorough review must be made to clearly establish that they refer to the same person. Any doubt should be resolved in favor of not consolidating the A-files.

For guidance on consolidating A-files, including required CIS updates, see Records Operations Handbook (M-407), chapter 3(C) in INSERTS.

When file consolidation results in a new primary A-number different than the RAPS records, asylum office personnel follow instructions in the next section to reflect the consolidation in RAPS.

After consolidating A-files, the individual who performed the file consolidations sends the applicant the *Notice of File Consolidation* letter (Appendix A 21).

b. Recording File Consolidation in RAPS

RAPS allows users to change the A-number of an applicant when consolidation of multiple A-files results in a new primary (also known as "survivor") A-number for an applicant, and view the history of A-number changes associated with an A-number. This functionality is available *only* when the survivor A-number is not already in RAPS.

HQASM is currently requesting changes to RAPS to accommodate consolidation of files when both records exist in RAPS.

If both records being consolidated exist in RAPS, asylum office personnel:

- Print all pages of the CHIS and CSTA screens of the old (a.k.a. "subordinate" or "consolidated" A number) and file them on the non-record side of the surviving A-file.
- Delete the subordinate record from RAPS using DELC.
- Update the information of the surviving record in RAPS to reflect any information learned from the additional records, if necessary.

If the survivor A-number is not in RAPS and the A-number in RAPS has been consolidated and no longer exists as a primary A-number, asylum office personnel follow the instructions below regarding the CHAN command.

i. CHAN

The Change an A-number (CHAN) command is used to change the A-number associated with a record in RAPS. Access to the CHAN command is limited to the users who have registered with Information Resource Management (IRM) (Joan Lewis) for access to the Delete Case (DELC) function (generally two per office).

An authorized user desiring to change the A-number of an applicant should enter the command CHAN and the old (also known as "subordinate" or "consolidated") A-number on the command line of RAPS. The CHAN screen will show the current A-number ("Old A-number"), the applicant's name, date of birth, sex, nationality, current case status, date of filing, case control office, an indicator of whether there is an I-881 on file, and whether there is a Special Group code applied to the case. The user will be prompted to enter the new A-number ("New A-Number"). Press enter after typing in the number. The user will then be prompted to answer yes or no ("Y/N") to the question, "Do you wish to Change the Existing A-number to the New (Y/N)?" Enter the applicable response and press ENTER.

When two A-files have been consolidated, the Case History (CHIS) screen of the new A-number will display two actions: "A-Number Changed (New)" and "A-Number Changed (Old"), each with the corresponding A-number on the left. The case history of the new A-number will contain all the case history of the old A-number. The old A-number is automatically deleted as an independent record in RAPS. The history of the change in A-numbers is also available to be viewed in the A-Number Change History (ANCH) screen of either A-number, as discussed in the next section.

ii. ANCH

The A-Number Change History (ANCH) permits users to view prior or subsequent A-number(s) for a particular A-number. Users may notice a longer than usual pause while RAPS searches the database when this command is entered. The result screen shows the subordinate/consolidated A-number ("Old A-number"), the new primary/survivor A-number ("New A-number"), the date the change was made in RAPS ("Change DT") and the user ID associated with the action. The user will be prompted to enter "P" to view prior A-number changes and "S" to view subsequent A-number changes.

> *Example:* A-file 88-888-888 is consolidated into A-file 77-777-777. Therefore, in RAPS, A-number 88-888-888 was changed to A-number 77-777-777. If "P" (for "prior") is entered in the ANCH screen for A77-777-777, the result will display A88-888-888 as the old A-number, and A77-777-777 as the new A-number. If "S" (for "subsequent") is entered in the ANCH screen for A77-777-777, no history will display, since A77-777-777 has not been changed to another A-number.
>
> Even though A88-888-888 has been deleted as a case in RAPS, the A-number change history is still viewable by using the ANCH command. In the case discussed above, if "S" is entered in the ANCH screen for A88-888-888, the result screen will display A88-888-888 as the old A-number, and A77-777-777 as the new A-number. If "P" is entered, no history will be displayed unless other A-numbers were previously consolidated into A88-888-888.

c. Adjudicating a Claim when the Asylum office has not Received the Multiple A-file(s)

An AO may make a decision on the asylum claim based upon the information available to him/her when the multiple A-files cannot be obtained within the normal case processing time, subject to the guidance in this section.

A determination to place a case on hold and wait for an A-file must be made in consultation with the SAO, as it may impact on how the case will be processed (Pick-up vs. Mail-out). As a general rule, the processing of an asylum application should not be upheld pending receipt of the other A-files that pertain to an applicant, except:

- when a legally correct and sufficient decision cannot be made without looking at the applicant's other A-file(s), OR
- when the applicant is eligible for asylum. An asylum office may not issue an *Asylum Approval* until all A-files are consolidated (except for a Legalization/SAW file). If, however, 90 days have passed since the initial attempt to obtain the A-file(s), follow procedures in (3)(a) or (3)(b) of this section. A recommended approval may be issued pending the receipt of the other files, unless there is an indication that evidence of ineligibility is contained in the other file(s).

2. Work Folders ("W-files")

A W-file is an "in-house" folder created in the absence of both an A-file and a T-file. A work folder contains non-record copies of correspondence or other materials. Under **no** circumstances should a W-file leave the office in which it was created. If the A-file is not located, and it becomes necessary to send the file out of the office for further processing, the W-file must be converted into a T-file.

For further guidance on the creation and use of W-files, see Records Operations Handbook (M-407), chapter 2 in INSERTS.

3. Temporary Files ("T-files")

The Service Center will generate a T-file whenever a review of the various INS databases indicates an applicant has a pre-existing A-number with INS (other than a Legalization/SAW file). In addition, any INS office may create a T-file when it becomes necessary for the office to take action on a case in the absence of the A-file.

For further guidance on creating and using T-Files, see Records Operations Handbook (M-407), chapter 2 in INSERTS.

If an AO must use a T-file during the adjudication of an asylum claim, the *Asylum/NACARA 203 Processing Sheet for T-Files* (Appendix A 63) is completed. Asylum office personnel immediately order the A-file in CIS, and place a copy of the 9504 screen on the right-hand side of the T-file. DACS, NAILS, and EOIR (PF11 on the 9101 screen in CIS) must be checked prior to the interview. In addition, asylum office personnel must make an effort to obtain the A-file and document the efforts on the processing sheet. This effort includes calling the office that possesses the A-file.

See Williams, Johnny N. INS Office of Field Operations. *Responsibilities of Adjudicators*, Memorandum to Regional Directors, et al. (13 November 2002), 2 p.

If any records check is positive, asylum office personnel follow existing procedures to obtain and resolve the cause for the positive records check. The resolution of the hits must be documented in writing before adjudication on a T-file, preferably attached to the processing sheet.

a. Interviewing an Applicant When the Asylum Office Cannot Locate an A-file or T-file

If the asylum office cannot locate an A-file or T-file, or has not received the file from another INS office, the interview may proceed only if the AO is able to obtain a copy of the applicant's I-589 from the applicant or another INS office with the file. If the I-589 is received, a T-file is created to store the applicant's records until the A-file is located or received.

If an I-589 is not available, the asylum office reschedules the interview using the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the fault of INS. Asylum office personnel make a concerted effort to locate the file. If, upon the applicant's return, the asylum office still cannot locate the file, the applicant may be

asked to submit a new application directly to the asylum office for further processing. An asylum interview may not be conducted unless the AO has at least a copy of the I-589.

b. Adjudicating an Application on a T-file

An asylum office may issue a *Referral, NOID*, *Final Denial* or *Recommended Approval* on a T-file unless there are reasonable grounds for believing information in the A-file would materially impact on the decision. A determination to wait for an A-file must be made in consultation with the SAO, as it may impact on how the case will be processed (Pick-up vs. Mail-out). If a decision is made on a T-file because the A-file could not be located or obtained after established procedures were followed, this must be documented on the *Asylum and NACARA § 203 Background Identity and Security Checklist* (Appendix A 62), which is reviewed and signed by an supervisory asylum officer (SAO) prior to decision issuance. **When any background check has a positive result (*i.e.*, a confirmed or possible matching record exists), adjudication on a T-file cannot proceed until the Asylum Office Director or Deputy Director has reviewed and concurred in the decision.** This authority may not be delegated.

An asylum office may NOT issue an *Asylum Approval* on a T-file, except as indicated below, this section

i. CIS Indicates Another INS Office has the A-file

By the time the asylum office is ready to issue a final decision, the asylum office, at a minimum, must have ordered the A-file in CIS and called the office that possesses it. There are several reasons why an A-file may not be sent to the asylum office, and they are usually recorded in CIS on the 9504 screen:

- M – The A-file is missing and the office is doing a special search.
- I – The A-file was transferred to the office that requested it (REQUEST FCO field); however, either that office did not receive it or confirm it into CIS as having been received, so it is still "in transit" according to the system.
- A – An application for another benefit is in process so the office cannot release the A-file.
- D – The A-file is under docket control, so the applicant was or is currently in the DACS system.
- F – The A-file was found, but not sent. A reason could be that it is needed in the office for something other than the processing of an application.
- P – The A-file is currently being used by INS Investigations
- N – The A-file was not found in the location according to the office's file control system. It is temporarily lost.

If **90 days** have passed since the asylum office made its initial attempt to obtain the A-file and the office holding the file cannot release it, asylum office personnel add to the *Asylum/NACARA 203 Processing Sheet For T-Files*:

"Initial attempt" refers to the date in CIS when the A-file was requested, or when the first contact was made to the office holding the A-file in order to obtain the A-file, whichever is earlier.

- A brief explanation that the asylum office is issuing an *Asylum Approval* because 90 days have passed since an initial attempt was made to obtain the file.
- A brief outline of the information from CIS that explains why the A-file was not transferred to the asylum office.
- A brief outline of the attempts that were made to obtain the A-file, referencing any documents in the T-file that evidence steps taken to obtain the A-file.

In addition, asylum office personnel update the A-file Receipt Confirmation (AFIL) screen, indicating that the office made a diligent search for the file.

An SAO signs the memo to ensure the asylum office took proper and complete steps to obtain the A-file. Asylum office personnel then prepare the case as an *Approval*. **If any security check has a hit of information pertaining to the applicant, the Director or Deputy Director must concur in the decision on the *Asylum and NACARA § 203 Background Identity and Security Checklist.***

ii. CIS Indicates the Asylum Office has the A-file

In some cases, CIS may indicate that an A-file is within the asylum office; however, the A-file is not in its proper RAFACS location, or RAFACS indicates that the A-file was sent to another office but CIS was not updated.

(a) A-file not in its RAFACS location

The records supervisor must perform a diligent search of the asylum office in order to locate the A-file, and record in the T-file all of the attempts to locate the A-file.

If 90 days have passed since asylum office personnel performed the initial diligent search, the office performs another diligent search. If the A-file still cannot be found, asylum office personnel include on the T-file processing sheet the following information:

- Brief explanation that the asylum office is issuing an *Asylum Approval* because 90 days have passed and the A-file cannot be located.
- Brief outline of information from CIS that shows the A-file has been designated as Missing "M."
- Brief outline of the attempts that were made to locate the A-file.

For further guidance on missing and lost A-files, see Records Operations Handbook (M-407), chapter 3(B), available in INSERTS.

An SAO signs the memo to ensure the asylum office took proper and complete steps to obtain the A-file. Asylum office personnel then prepare the case as an *Approval*.

(b) A-file sent to another office but CIS was not updated

RAFACS may indicate that an A-file was sent to another office; however, CIS was not updated to show the new office location. Asylum office personnel must:

- Update CIS to show the correct A-file location.
- Request the A-file in CIS.

Follow the instructions in (3)(b)(ii)(a) of this section if the asylum office does not receive the A-file within the 90-day period and the case is ready for an *Asylum Approval*.

4. Record Order

Prior to submitting the file for the next step in processing, all staff members are responsible for seeing that the file is maintained in record order. Record order is as follows (*listed from top to bottom*):

<table>
<tr><th colspan="2"><u>ASYLUM DIVISION A-FILE RECORD ORDER</u></th></tr>
<tr><td><u>Record Side (left hand side)</u>
• Form G-28, Appearance as Representative (if any)
• ANSIR sheet (if referral)
• NTA
• Top portion of I-94 showing asylum approval (if issued)
• Decision Letter (e.g. Referral, Final Approval, etc.)
• Rebuttal to NOID (if any)
• Assessment or NOID *
• DRL/CRA Response (if any)
• Pick-Up Notice/Mail-out Notice
• Record of Applicant and Interpreter Oaths
• Waiver of Presence of Representative (if any)
• Interview Notices (in reverse chronological order)
• Acknowledgement of Receipt mailer
• Change of Address notification (if any)
• FD-258 Fingerprint Card (if any)
• Sworn statement taken at interview, if any
• I-589 Application for Asylum (w/ photo(s) attached)
• Applicant-specific supporting documentation for I-589
• General country conditions documentation submitted by applicant in support of I-589
• G-325A Biographic Information submitted with asylum application (if any)
• Advance Parole document, if any
• Form I-765, Application for Employment Authorization
• Additional copies of I-589 packet
• Previously submitted asylum applications (if any)</td><td><u>Non-Record Side (right hand side)</u>
• Asylum and NACARA § 203 Background Identity and Security Checklist, with required screen prints
• Memos to file (if any, in chronological order)
• I-213 (if required)
• AO's interview notes
• Non-record Correspondence (in reverse chronological order)
• Service Center Checklist and database checks conducted by Service Center
• Miscellaneous I-797 (if any, in reverse chronological order)

* It is not necessary to place a copy of a P.A.'s assessment or NOID in a dependent's file. However, the file must contain copies of the decision letter (e.g., Referral Notice) if the dependent's A-number is listed on it.</td></tr>
</table>

L. IDENTITY AND SECURITY CHECKS

Section 208(d)(5) of the INA prohibits an asylum officer or immigration judge from granting asylum status to an applicant who filed for asylum on or after April 1, 1997 until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and the Secretary of State. Currently, the appropriate records and databases to be checked are CIS, DACS, NAILS, IBIS and FBIQUERY (for fingerprint and name checks).

Although the statute requires INS to perform such checks on an applicant only if s/he filed for asylum on or after April 1, 1997, and only if an AO has found the applicant eligible for asylum status, HQASM has mandated background identity and security checks of every applicant in the following manner:

- All applicants aged 14 to 74 who filed for asylum on or after March 12, 1998, are scheduled to appear for fingerprinting at an INS-approved fingerprinting site so the FBI can conduct a confidential background investigation. Fingerprint results must be less than 15 months old and cleared in accordance with this section at the time of an approval.
- All applicants aged 14 to 74 who filed for asylum before March 12, 1998 and who are found eligible for asylum status are scheduled to appear for fingerprinting at an INS-approved fingerprinting site so the FBI can conduct a confidential background investigation. Fingerprint results must be less than 15 months old and cleared in accordance with this section at the time of an approval.
- All applicants, regardless of the filing date of their applications and regardless of their ages, must have a completed *Asylum and NACARA § 203 Background Identity and Security Checklist* (Appendix A 62) in the file.

The FBI fingerprint check and *Asylum and NACARA § 203 Background Identity and Security Checklist* processes are outlined within this Section.

1. Asylum and NACARA § 203 Background Identity and Security Checklist

The *Asylum and NACARA § 203 Background Identity and Security Checklist* is used to record information regarding required background checks for asylum applicants. Local asylum office policy dictates who is responsible for completing the *Checklist* and at what stage in the processing it is completed, as long as all checks are current in accordance with guidelines specific to each type of check on the final decision (FDEC) date and the date of the issuance of a conditional grant letter, where applicable. The *Checklist* centralizes but is not a substitute for other required documentation of background checks.

Asylum office personnel attach a completed *Checklist* with attached computer printouts from each of the appropriate database screens to the non-record side of the file. A template containing the minimum requirements and a quick reference instruction sheet are provided at Appendix A 62.

2. INS Systems – CIS, DACS, NAILS

a. CIS

Asylum office personnel check CIS for each principal and dependent applicant to determine whether there are additional A-files that may contain relevant information or A-numbers that may require consolidation. The CIS search is conducted on the 9106 screen, which is accessed by tabbing to the "COMMAND:" field and typing "9106" or selecting "91" on the CIS main menu, and then "06" on the CIS search menu. The minimum required search uses the following search criteria:

- Last name;
- First name; and
- Exact date of birth.

The printout with the result of the search is retained for the file only if A-numbers relating to the applicant are discovered, and then only those pages showing the A-numbers that relate to the applicant. If the CIS search results in the discovery of multiple A-numbers, see section III(K), *File Management*, for guidance.

Additional or alternate names or dates of birth discovered during adjudication are also checked as indicated. Additional search criteria, such as a date of birth range, may be required at the discretion of the asylum office Director or may be conducted on a case-by-case basis at the discretion of the AO or SAO adjudicating the case.

b. DACS

Asylum office personnel check DACS for each principal and dependent applicant to determine whether there are any records that may contain relevant information. The DACS searches on each applicant's A-number are conducted as follows:

- Type CASS at the command field and press ENTER to access the DACS CASE SUMMARY SCREEN. Print the results of the CASS command, whether or not a record is found. If no record is found, a "NO CASE ON DATABASE" message will appear.
- If a record is found, type LCAS at the command field and press ENTER to access the DACS CASE LOOK SCREEN. Print the screen and check the subscreens by placing an "X" under the "SEL" column to select the record and an "X" next to the CLOSURE, BOND, RE FILES, IJ, BIA, MOTIONS, COURT ACT, and COMMENTS field, each in turn. Print only screens containing records.

Records in DACS are analyzed to determine any impact on jurisdiction or the merits of the application. Asylum office personnel coordinate with enforcement entities to follow-up on search results, as appropriate.

Additional A-numbers relating to the applicant, if any, are also checked in DACS as outlined above. Additional search commands may be required at the discretion of the asylum office Director or may be conducted on a case-by-case basis at the discretion of the AO or SAO adjudicating the case.

c. NAILS

Asylum office personnel check NAILS for each principal and dependent applicant to determine whether there are any lookouts relating to the applicant. The NAILS search is conducted on the NAILS LOOKOUT SEARCH OPTIONS screen (the default opening screen for NAILS). The minimum required search uses the following search criteria:

- Last name;
- First name; and
- Exact date of birth.

After typing the search criteria, press ENTER. Records in NAILS are analyzed to determine any impact on jurisdiction or the merits of the application. Asylum office personnel coordinate with enforcement entities to follow-up on lookout results, as appropriate.

Additional or alternate names or dates of birth discovered during adjudication are also checked. Additional search criteria or search options, such as partial name matching or another of the five options listed on the screen, may be required at the discretion of the asylum office Director or may be conducted on a case-by-case basis at the discretion of the AO or SAO adjudicating the case.

3. IBIS

Additional HQASM guidance is forthcoming. For current guidance, please see the *Immigration Services Division Standard Operations Procedure Manual for the Interagency Border Inspection System (IBIS)*, found on the "IBIS Information" bulletin board on cc:Mail.

4. FBI Name Checks

a. Name Check Requirements

The initiation of an FBI name check is required for every asylum applicant, regardless of age. A definitive "no record" response or a resolution of any positive match records in accordance with standard law enforcement information resolution procedures is required prior to the issuance of an asylum approval. FBI name and fingerprint checks are not equivalent, and a separate response from each is required before proceeding to approval.

Williams, Johnny N. INS Office of Field Operations. *Responsibilities of Adjudicators*, Memorandum for Regional Directors, et al. (Washington, DC 13 November 2002), 2 p.

Referrals may go forward without the final result of the FBI name check or with a positive match. Asylum office personnel highlight the status of the FBI name check on the *Asylum and NACARA § 203 Background Identity and Security Checklist.* If the name check remains pending, a print-out of the latest FBIQUERY search is attached to the checklist. In the case of a positive match, asylum office personnel attach to the checklist copies of any available documentation regarding the positive match and coordinate with the Office of District Counsel regarding any immediate needs for follow-up action with law enforcement entities.

Final denials, administrative closures and dismissals may also go forward without the final result of the FBI name check, except that A-files containing such decisions remain in the asylum office until the FBI name check response is received and matched with the A-file, except as indicated below. While awaiting the FBI response, the indication on the *Asylum and NACARA § 203 Background Identity and Security Checklist* that the FBI name check is pending is highlighted. When the response is received, asylum office personnel process the case as follows.

- If the response is that there is no matching FBI record, the A-file may be released from the asylum office under normal procedures.
- If the response contains an FBI record, asylum office personnel conduct any follow-up actions, including the initiation of removal proceedings, where appropriate, and coordination with INS Investigations or other law enforcement agencies, as is currently done in connection with other positive security checks.

If there is a positive match at the time of the final denial, administrative closure or dismissal, asylum office personnel follow the procedure in the second bullet, above.

An A-file containing a final denial, administrative closure, or dismissal that must be released from the asylum office due to a request from another INS component prior to receipt of the FBI response must be flagged with a cover sheet indicating that an FBI name check response is pending and a printout of the most recent search in FBIQUERY attached to the file jacket.

If a response indicating an FBI record is received after a file has been released, asylum office personnel coordinate with the office currently working with the file (if any) and ensure that appropriate follow-up action is taken and that the file is documented.

b. Name Check Procedure

Procedures for requesting an additional FBI name check after discovery of an alias or alternate name is forthcoming.

FBI name checks are initiated on an automated basis via computer tapes generated nightly from data of cases newly entered into RAPS and cases for which FBI name checks were manually requested. The FBI name check is conducted on the applicant's name as it appears on the I-589 and in RAPS. If the name change (NCHG) command is used, RAPS automatically initiates a new FBI name check request. When the name check is initiated, an action appears on the CHIS screen. The results of the checks from FBI are uploaded into FBIQUERY, and then to RAPS.

The responses received from FBI and uploaded into RAPS are as follows:

FBI Response	CSTA p. 1, FBIN field	CSTA p. 2, FBI Name CK field	CHIS
NR	N	NO RECORD	FBI NAME RESULT: NO RECORD
IP	[Blank]	PENDING	FBI NAME RESULT: PENDING
PR	Y	POSITIVE RESPONSE	FBI NAME RESULT: POSITIVE RESP

When the FBI has a positive match on the applicant's name, response records must be reviewed and analyzed for any impact on adjudication and for whether law enforcement follow-up is required. FBI name check positive response records are forwarded to the Law Enforcement Service Center (LESC) in Vermont. Procedures for obtaining FBI name check records are in development and will be announced at a later time. Contact HQASM for questions on obtaining positive FBI name check results.

A final approval (FDEC of G1) cannot be entered in RAPS unless the FBI response is no record or unless a positive response has been cleared on the RCDS screen as "CONFIRMED" or "NEGATIVE."

There is currently no established expiration date for an FBI name check result. Therefore, FBI will not conduct a second check on the same individual. If a duplicate request for a name check has been made to FBI, FBI returns to INS a result message indicating that the check is duplicative, displayed in CHIS as "FBI NAME RESULT: DUPLICATE." To avoid confusion, RAPS will not display this message when there is a already a definitive FBI name check response of Y or N already in RAPS. Therefore, the presence of a "duplicate" message in RAPS **without any other response from the FBI name check for that individual** may be an indicator that another entity within INS already requested a name check for the individual, and another A-file may exist. Asylum office personnel will then be required to search FBIQUERY by the applicant's name to determine the result of the name check and check CIS for multiple A-numbers. The result of the FBI name check can then be manually entered into RAPS on the FBIT screen. Guidance on processing cases with multiple A-numbers is in this Manual at section III(K), *File Management*.

5. FBI Fingerprint Clearance Process -- Overview

The following illustrates the FBI fingerprint check process in RAPS:

- RAPS "tags" the A-number of the P.A. and any dependent on the case between the ages of 14 and 74 and uploads it overnight into the Master Fingerprint Scheduling system (MFS):
  - within 3 days of entering a new case into RAPS (on or after March 12, 1998) when the address falls within the jurisdiction of the local office, or
  - upon using the ADDC command to schedule an interview of a case when the address falls within the jurisdiction of a circuit ride location.
  - upon use of the FREQ command.
- The MFS schedules each A-number for an appointment at a designated fingerprinting site.
- The Service Center generates and mails an appointment mailer to the individual who must receive a fingerprinting appointment. The individual has 14 days from the date on the mailer to appear at the fingerprinting site.
  - If the individual appears at the fingerprinting appointment without proper identification, the fingerprinting site takes two (2) fingerprint cards of the individual, one of which will be sent to the asylum office. The asylum office enrolls the fingerprint card in the IDENT-Asylum system so the office may verify that the individual who appeared for fingerprinting is the same person who is appearing for the asylum interview.
- After the individual has been fingerprinted, the fingerprinting site transmits the fingerprints electronically to the FBI.

- The FBI updates a computer database when it processes the fingerprints.
- The database with the results of the FBI fingerprint check is uploaded into RAPS. The results may also be viewed in FBIQUERY via CLAIMS or CIS.

Before the FBI response is received, RAPS receives interim updates about the fingerprint process via uploads. Asylum office personnel can therefore locate information about where an applicant is in the processing of his/her fingerprints through either the Case History (CHIS) screen or the Case Status (CSTA) screen. The following is a list of fingerprint-related narratives in RAPS and their descriptions:

- "FINGERPRINTS REQUESTED (FREQ)" [on CHIS screen only] indicates that the alien number has been "tagged" for scheduling through use of the FREQ command.
- "FING AUTOMATICALLY REQUESTED" [on CHIS screen only] indicates that the alien number has been "tagged" for scheduling as a part of a batch request. (**Note:** This narrative was instituted in November 2001. "Tagging" via batch requests prior to that date will show the previous narrative, "FINGERPRINTS REQUESTED," with a user ID of "BATCH.")
- "FING REQUEST SENT TO SCHEDULER" [on CHIS screen only] indicates that the alien-number has been forwarded to the MFS. However, it does not mean that the fingerprinting site has scheduled the individual.
- "FING SCHED REQUEST ACKNOWLEDGED" [on CHIS screen only] indicates that the alien number has been confirmed as "received" by the scheduler; however, it does not mean that the fingerprinting site has scheduled the individual.*
- "FINGERPRINTING SCHEDULED" [on CHIS screen only] indicates that the alien-number has been scheduled to be fingerprinted at the fingerprinting site.*
- F/P WINDOW ST" [on CSTA screen only] indicates when the 14-day "window" period during which the individual has to be fingerprinted begins.
- "FINGERPRINTS SENT TO FBI" (self-explanatory).
- "FBI RESPONSE" [on CSTA screen] indicates the type of response that was received by the FBI such as: "I" for IDENT; "N" for NONIDENT; "P" for processing/pending clearance, "R" for REJECT. The "FBI REC" field on the CSTA screen indicates the date this information was received. Both of these fields may be updated either manually using the FBIT (FBI File Received) command, or automatically through the RAPS/MFS interface.

* OIRM has indicated that receipt of this information from the scheduler is not consistent, so it may not appear in every case.
OIRM is working to have these updates submitted on a more consistent basis.

RAPS allows an individual to "tag" an alien-number for fingerprint scheduling at a designated fingerprinting site using the FREQ command, explained above in Section II(L)(1)(i). FREQ may also be used to reverse an unintended fingerprint request. When a fingerprint appointment is cancelled, the CHIS screen will indicate "FING SCHEDULING REQUEST CANCELLED."

6. Finding FBI Response Information in the Databases

Information about the processing of an individual's FBI fingerprint check or name check by accessing the FBI Fingerprint Tracking System (FBIQUERY) (a.k.a. FD258 Tracking System, or FTRK). Fingerprint clearance information may also be found in RAPS, but FBIQUERY may contain information that has not yet been uploaded into RAPS. Before concluding that no FBI clearance response is available, asylum office personnel check FBIQUERY for a response.

The FBIQUERY system is searchable by A-number or, if no record is found by A-number, by name and date of birth. A fingerprint clearance result in FBIQUERY may be used to update RAPS manually using FBIT if the result has not been uploaded through the systems interface. FBIQUERY may show multiple results for one person due to multiple fingerprint requests, rejected or expired prints, or multiple immigration benefit applications filed. A fingerprint clearance from FBIQUERY is valid for use by the asylum program as long as it is less than 15 months old, and even if the "FORM#" associated with the result is not I589.

To ascertain the status of an FBI fingerprint clearance in RAPS, check the Case Status (CSTA) and Case History (CHIS) screens.

To ascertain the status of an FBI clearance in FBIQUERY via CIS:

- From the TELEVIEW main menu (where the various systems available to the user are in a numbered list – the number varies depending on the number of systems the user has access to), select the Session Number (Sesnum) for a line item for any INS system available and pressing ENTER.
- When the next screen appears reading "ENTER NEXT TASK CODE", key in "FBIQUERY." [In the case of CIS, the user must first clear the screen by press in CLEAR on the pop-up keypad before entering "FBIQUERY."]
- Hit ENTER. This will bring you to the FBI TRACKING MENU
- Type an "X" next to FBI FINGERPRINT TRACKING SYSTEM for a fingerprint clearance or FBI NAME CHECK RESPONSE for a name check.
- Type in the A-number of the applicant (Place a "0" before the A-number, not an "A"). Hit ENTER.
- If the applicant is in the system according to the A-number search, it will bring you to a screen about the processing of that individual's check results. If information about the A-number does not appear, type in the name and date of birth of the applicant. Hit ENTER.

FBIQUERY can also be access through CLAIMS 3. At the CLAIMS 3 main menu, selection #15 is called FD258 FINGERPRINT TRACKING INQUIRY. Type in "15" and hit ENTER. This will bring you to the FBI TRACKING MENU.

7. Fingerprint Clearance Codes and Follow-up Processing Requirements

The following fingerprint clearance codes are relevant to asylum processing:

a. "N" – NONIDENT

No record of the applicant exists in the FBI's Criminal Justice Information System (CJIS) database. This is also referred to as a "no-hit" response. An applicant with a NONIDENT response is cleared for asylum approval, if there are no other impediments to approval in the other required database checks or the A-file.

b. "P" – PROCESS

The FBI is processing the fingerprint clearance. Asylum office personnel await the FBI's response, when required, before proceeding.

c. "S" - SCHEDULE

"S" is not a code used by the FBI to indicate a particular type of clearance. An "S" appears specifically for a NACARA case, and was developed by the asylum program for the following reason:

An asylum office cannot schedule an interview for an NACARA applicant until it receives results of an FBI fingerprint check. If a NACARA applicant has an IDENT response, asylum office personnel must review the record before the case may be scheduled. When an "S" appears, this indicates that the applicant's IDENT response was reviewed by asylum office personnel. Changing an "I" (IDENT) to an "S" (SCHEDULE), allows RAPS to schedule the applicant for a NACARA interview.

d. "C" – POLICE CLEARANCE

"C" is not a code used by the FBI to indicate a clearance response. The "C" code was developed by the asylum program to indicate that an applicant has complied with fingerprint processing requirements and remains eligible for asylum, when the applicant's prints are unclassifiable, cannot be taken due to health reasons, or the applicant is over the age of 74.

Asylum office personnel enter the "C" response on the FBIT screen in the following situations:

- when the applicant's prints have been rejected twice by the FBI as unclassifiable (see below for an explanation of the "R" (REJECT) response), the applicant has provided police clearance letters and any associated court disposition records, the asylum office has completed a required sworn statement, and the individual remains eligible for asylum.
- when the applicant has been granted a fingerprint waiver for health reasons (see below for a description of procedures related to fingerprint waivers), the applicant has provided police clearance letters and any associated court disposition records, the asylum office has completed a required sworn statement, and the individual remains eligible for asylum.
- when the applicant is at least 75 years old (see below for an explanation of age-based fingerprint waivers), has complied with the sworn statement requirement, submitted arrest disposition records if a criminal history was admitted in the sworn statement, and the individual remains eligible for asylum.

e. "R" – REJECT

The FBI may reject a fingerprint card because the prints were not taken correctly, or the applicant's prints are not machine-readable. RAPS records a rejection of an applicant's fingerprint card as follows:

i. First Rejection

When a first rejection is recorded, a "R" appears in the FBI RESPONSE field on the CSTA screen and in CHIS. The ASC is responsible for tracking and rescheduling applicants with REJECT responses for new fingerprint appointments. RAPS is not currently receiving uploads of the details of this rescheduling process. Asylum office personnel should check for a new result every 30 days. If after 60 days, a second FBI response has not been recorded in RAPS or FBIQUERY, asylum office personnel may enter FREQ to request a new fingerprint appointment.

ii. Second Rejection

If a second "R" response is received from FBI, "REJ. MAX" appears in FBI RESPONSE on the CSTA screen and "MAX. FBI REJECT – CLEARANCE REQ'D" appears in CHIS. The fingerprinting requirement will be waived after two rejections, but the applicant must present evidence that s/he does not have a criminal record in the U.S. before an *Asylum Approval* may be issued. See below, section (L)(8)(c), for guidance on processing an applicant granted a fingerprint waiver due to unclassifiable prints (double REJECT responses).

f. "I" – IDENT

The FBI reports an "IDENT" ("I") response when an administrative or criminal record exists in CJIS. The FBI sends a hard copy of the Report of Arrest and Prosecution (RAP) sheet to the Nebraska Service Center (NSC). The NSC sends the RAP sheet to the asylum office. This is also referred to as a "hit" response.

The asylum office may receive the results of an FBI fingerprint check before or after an assessment has been prepared. When an applicant with an IDENT response appears eligible for asylum and the asylum office has not yet received a RAP sheet and all necessary follow-up documentation to make a determination of eligibility, the AO prepares a *Recommended Approval*.

When the asylum office receives the RAP sheet, asylum office personnel determine whether the record pertains to an administrative or criminal history record.

i. Administrative Record

An administrative record lists an encounter of the applicant by INS. For example, the record may pertain to an apprehension during entry into the U.S., an apprehension during an INS work site raid, or a removal from the U.S. The asylum office does not request follow-up documentation about the record from the applicant because the FBI report is based upon internal INS records. If the record shows the existence of another A-file, asylum office personnel order, examine, and consolidate the A-files, where appropriate.

Mere apprehension of an individual does not preclude him/her from asylum eligibility. However, the record may bear on the applicant's eligibility to apply for asylum, asylum office jurisdiction, or on the credibility of the asylum claim itself (e.g., the date of entry on a record is different from the date of entry alleged by the individual thereby impacting the one-year filing deadline, the record indicates the applicant was placed into proceedings before EOIR, or the date of entry on the record contradicts a material aspect of the individual's claim).

If the administrative record indicates that an individual was previously removed from the U.S. or left the U.S. voluntarily while under an order of deportation, exclusion, or removal, and the applicant subsequently re-entered the U.S. illegally, refer to Section III(U), *Reinstatement of a Prior Order*, for processing guidance. The processing of the asylum application stops pending the outcome of the District Director's determination on the reinstatement of the prior order.

ii. Criminal Record

An individual with a criminal record must obtain a certificate of disposition for each offense listed on the FBI report. This is true even if the charge does not appear to constitute a bar to asylum eligibility. The asylum office issues to the applicant a *Request for Final Court Disposition(s)* letter (Appendix A 10), which provides him/her 60 days to submit the required documentation that pertains to either his/her own criminal history, or the criminal history of a dependent. If the asylum office has found another way to obtain the dispositions on behalf of an applicant, such as coordinating with an INS district office of Investigations, asylum office personnel need not issue the letter.

***iii. Applicant Found Eligible for an* Asylum Approval**

If after review of the requested disposition(s) or administrative record, asylum office personnel determine that the applicant is still eligible for a grant of asylum, asylum office personnel:

To update an FDEC of G1 in RAPS, override the "I" on the FDEC screen.

- Prepare a short memo to the file that states why the record of the individual does not warrant a reversal of the decision to approve asylum status.
- Prepare the case as an *Approval*.

***iv. Applicant Found Ineligible for an* Asylum Approval**

If after review of the requested disposition(s) or administrative record, asylum office personnel determine that the applicant is ineligible for a grant of asylum, the asylum office takes action depending upon the immigration status of the individual. Refer to Section III(F)(9) (*Split Decisions*) if the P.A. and a dependent do not have the same immigration status, or if the P.A. is eligible for asylum but the dependent is ineligible for an asylum approval.

(a) Applicant is under jurisdiction of EOIR

If the administrative record indicates the applicant is under the jurisdiction of EOIR, asylum office personnel complete the following steps.

- If the applicant was previously issued a *Recommended Approval* letter, asylum office personnel prepare and issue a *Cancellation of Recommended Approval (Lack of INS Jurisdiction)* (Appendix A 22).
- If the applicant was not issued a *Recommended Approval* letter, prepare a short memo to the file that states why the record of the individual warrants a reversal of the decision to approve asylum status. Place the memo on the right-hand side of the A-file at the very top in order to alert a Trial Attorney of the processing before the asylum office. In the asylum office Director's discretion, the assessment to grant is either moved to the non-record side and clearly marked, "UNOFFICIAL-DRAFT" or removed from the file and shredded.

- Update the Admin Close Update (CLOS) screen, indicating the case is under IJ jurisdiction (C4).
- Indicate on the CLOS screen that the asylum office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- Forward the file to the District Counsel, or if a final order has been entered by EOIR and is not under appeal, to the District Director for execution of the order.

(b) Applicant is a parolee

If applicant is a parolee, refer to Section III(Q), *Parolees,* for processing instructions. If the asylum office previously issued a *Recommended Approval* letter to the applicant, issue the appropriate *Cancellation of Recommended Approval* notice.

(c) Applicant is deportable or removable

Asylum office personnel:

- Prepare a short memo to the file that states why the record warrants a reversal of the decision to approve asylum status. The memo must clearly reflect that the applicant did not have the opportunity to rebut the information, as it was discovered after the asylum interview. This memo replaces the need to prepare an *Assessment to Refer*.
- Prepare the case as a *Referral* and include the adverse information in the *Referral Notice*. If the asylum office previously issued a *Recommended Approval* letter to the applicant, issue a *Cancellation of Recommended Approval and Referral Notice (Derogatory Information)* (Appendix A 23) instead of a regular *Referral Notice.*

(d) Applicant is in-status and Recommended Approval *was NOT issued*

Asylum office personnel:

- Prepare and issue a *NOID*.
- Update PDEC in RAPS with the appropriate decision code (D1-D7)
- Complete follow-up processing of *NOID*.

(e) Applicant is in a valid status and Recommended Approval *WAS issued*

Asylum office personnel:

- Prepare the case as a *NOID*. Insert the following language in place of the first sentence in the *NOID* template:

  "You previously received a letter from this office recommending approval of your asylum application pending the results of the mandatory, confidential background of your identity and background. The purpose of this letter is to notify you of the intent to cancel your recommended approval and deny your request for asylum."

  If the derogatory information pertains to an issue that impacts on the analysis of the applicant's claim (e.g., credibility), the asylum claim must be analyzed in the NOID. If the applicant would otherwise be eligible for an asylum approval but for a mandatory bar, no analysis of the applicant's claim is necessary, and the NOID may only address the mandatory bar.
- Using the CORR screen, remove the PDEC of "GR" in RAPS.
- Update PDEC in RAPS with the appropriate decision code (D1-D7).

If the applicant is found eligible for asylum after the rebuttal period has expired, the asylum office prepares the case as an approval.

If the applicant fails to respond to the *NOID* or the response does not overcome the reason(s) for denial, the asylum office cancels the recommended approval and renders a final decision:

- If the applicant is now deportable or removable, prepare the case according to directions above in subsection (c).
- If the applicant is still maintaining a valid status, prepare:
  - *Cancellation of Recommended Approval and Final Denial* (Appendix A 24).
  - Update RAPS to reflect an FDEC of D1-D7, depending upon the reason for the denial. The deport code is A6.

v. Obtaining a RAP Sheet

If an asylum office has not received a RAP sheet after 90 days from the date the FBI processed the fingerprints (RESP DT field on the CSTA screen), or if the applicant's IDENT response is over 15 months old and an updated RAP sheet is required, asylum office personnel must contact the Office of Fingerprint Liaison (OFL) to obtain a RAP sheet.

See Yates, William R. INS Immigration Services Division. *Request for Duplicate Rap Sheets and Inquiries*, Memorandum to Regional Directors, et al. (Washington, DC: 22 February 2001); Yates, William R. INS Immigration Services Division. *Policy for Requesting Updated Rap Sheets for Expired Fingerprint Results*, Memorandum to Regional Directors, et al. (Washington, DC: 27 December 2001), 2 p.

Note: In order to avoid duplicate requests, asylum office Directors designate a fingerprint coordinator to make and follow up on requests. The fingerprint coordinator establishes and maintains a log of requests for duplicate or updated RAP sheets. Asylum office Directors must notify the OFL through the ccmail address "Fingerprint Liaison" of the names and phone numbers of a primary and backup coordinator. The OFL may not respond to requests that are not made through the office's fingerprint coordinator.

The fingerprint coordinator ensures that the original RAP sheet has not been received by the asylum office before making a request for a duplicate. The fingerprint coordinator may contact the OFL by either facsimile or cc:mail by providing the following information about the applicant:

- A-number and social security number, if applicable
- Full Name
- Date of Birth
- Customer Identification Number (CIDN). This number may be found in the FBI TRACKING SYSTEM on the screen that lists the outcome of the individual's FBI fingerprint check.
- Applicant's country of birth
- Approximate date fingerprints were submitted to FBI
- For expired IDENT results, include the FBI Number on the existing RAP sheet, of if none, the "FNU" number from FBIQUERY, across from the date processed by FBI, and directly under the control number.
- An indication of whether the request is for a duplicate or updated RAP sheet.

Fax requests should be directed to the OFL at (304) 624-9029. The address for ccmail inquiries is "Fingerprint Liaison." Status inquiries may be directed to Jack Hartsoch at the same fax number and ccmail address, with a copy to Len Gradowski.

If the request pertains to an applicant whose fingerprint processing has been expedited, identify it as such in the cover sheet of the fax or the subject line of the ccmail. Before requesting a duplicate RAP sheet in an expedited case, if less than 30 days have passed since the "Date Processed by FBI," the fingerprint coordinator contacts the service center to learn whether the service center has the RAP sheet or if it is in transit because the service center recently forwarded it to the asylum office.

If OFL is unable to obtain the RAP sheet, and more than four (4) months have passed since the fingerprints were sent to the FBI, the asylum office schedules the applicant for new fingerprints using the FREQ command in RAPS.

8. Duration of Fingerprint Check Results

The results of an FBI fingerprint check expire 15 months after the date they are issued. This 15-month period begins from the date indicated on the RESP DT field on the CSTA screen in RAPS. This date is also found on the DATE PROCESSED BY FBI field within the FBI Tracking System (FBIQUERY).

An asylum office cannot issue an *Asylum Approval* to an applicant whose fingerprints have expired. This requirement applies to all final approvals, including CFP cases. Asylum office personnel must schedule an individual with a "NON-IDENT" response for a new fingerprinting appointment using the FREQ command. However, if the applicant had an "IDENT" response, an updated RAP sheet may be obtained from the FBI without requiring the applicant to be refingerprinted. The procedures for obtaining an updated RAP sheet are discussed above in section III(L)(7)(f)(v), *Obtaining a RAP Sheet.*

See Section III(B)(4) for more information on CFP cases.

9. Expediting Fingerprint Clearances

An asylum office may request expedited processing of an FBI fingerprint check when emergent circumstances are present in the case of an applicant who is eligible for asylum. An example is when the dependents of an applicant are at risk of harm in another country, and the asylum office needs to issue an asylum approval so the applicant may file an I-730 for each dependent.

Langlois, Joseph E. INS Asylum Division. *Expedited Processing of Fingerprint Cards*, Memorandum to Asylum Office Directors. (Washington, DC: 24 May 2000), 1 p.; Yates, William R. INS Immigration Services Division. *Expeditious Processing of Civil Fingerprint Cards, Forms FD-258,* Memorandum to Regional Directors, et al. (Washington, DC: 18 May 2000), 3 p. (appended to Langlois memorandum of 24 May 2000).

The asylum office Director determines whether the office shall take steps to expedite a fingerprint clearance. If expeditious processing is needed, the Director, or his or her designee, directly coordinates with the INS Application Support Center (ASC) manager in order to expedite the clearance process, before notifying the applicant that expeditious processing has been arranged. The ASC manager may request the following information from the asylum office:

- Applicant's A-number
- Applicant's Name
- Applicant's Address
- Form Number (I-589)
- Reason for Expeditious Processing

The asylum office should keep a copy of any correspondence with the ASC in the applicant's A-file. If these expedited procedures are insufficient to meet processing time needs, contact HQASM for further assistance in coordinating with HQ-Office of Field Operations.

10. Fingerprint Cards for Applications Filed Prior to March 12, 1998

Prior to March 12, 1998, an alien was required to submit two (2) completed Form FD-258 fingerprint cards to INS along with an I-589 when s/he applied for asylum. With the opening of the designated fingerprinting sites, INS suspended this requirement for all asylum applications filed on or after March 12, 1998.

Due to a high rejection rate by the FBI of fingerprint cards that were completed before the fingerprint sites were opened, an asylum office should no longer send to the FBI a fingerprint card that was completed prior to March 12, 1998. If an AO has found an applicant eligible for asylum status based upon an I-589 that was filed prior to March 12, 1998, the AO should use FREQ to request a new fingerprint appointment. Asylum office personnel should enter the A-numbers of the applicant and any dependent independently to place them in line for scheduling at a fingerprinting site.

11. Waived Fingerprints

A fingerprint requirement that has been waived requires follow-up processing if the applicant is found eligible for asylum status. The follow-up processing requirements for each type of waiver are discussed below.

a. Waiver Granted for Health Reasons

An applicant may be unable to provide any fingerprints or legible fingerprints due to a birth defect, physical deformity or skin condition. Only an individual in charge of a fingerprinting site may grant a fingerprint waiver; therefore, an applicant must be scheduled for and appear at a fingerprinting appointment so a determination can be made on whether s/he is eligible for a waiver.

If a waiver is granted, the following occurs:

See Pearson, Michael. Executive Associate Commissioner. Fingerprint Waiver Policy for All Applicants for Benefits under the Immigration and Nationality Act and Procedures for Applicants Whose Fingerprint Responses Expire after the Age Range During Which Fingerprints are Required, Memorandum to Regional Directors (Washington, DC: 20 July 2001), 8 p.

- The individual granting the waiver annotates the fingerprint appointment notice and issues an *INS Applicant Police Clearance Notice*. The annotations to the fingerprint appointment notice detail the condition(s) that warrant(s) the waiver. The *INS Applicant Police Clearance Notice* instructs the applicant to obtain police clearances and arrest reports (if any) for every U.S. residence during the past (5) years, and to mail the clearances to the asylum office.
- The individual granting the waiver provides a copy of the annotated fingerprint notice and the original *INS Applicant Police Clearance Notice* to the applicant.
- The fingerprinting site sends the original annotated fingerprint notice and a copy of the *INS Applicant Police Clearance Notice* to the service center having jurisdiction over the fingerprint site, which should in turn forward the documents to the A-file.

If the applicant lives or lived in a jurisdiction that will not, as a matter of policy, give police clearance letters, asylum office personnel coordinate with District personnel with access to NCIC for a name and date-of-birth records check.

At the time the fingerprint waiver is granted, ASC personnel inform the applicant that police clearances will be required and given a notice explaining the documentation required. If the applicant does not notify the asylum office on his or her own, asylum office personnel issue an *Appointment for Sworn Statement – Waiver of Fingerprints* letter (Appendix A 26) to call in the applicant to complete follow-up processing, deleting the paragraphs referring to police clearances if the documentation has already been received.

The letter informs the P.A. that s/he has 60 days to submit a "no record" statement for the individual whose prints were waived. Local asylum office policy dictates whether to schedule the applicant for a specific appointment with an INS Officer in order to complete the sworn statement, or whether to allow an applicant to come into the office anytime during office hours. If the waived fingerprints pertain to a dependent, the asylum office does not require the P.A. to appear at the asylum office.

If the individual admits to a criminal history during the completion of the *Sworn Statement (Fingerprints)* (Appendix A 9), or police clearance documents indicate a criminal record, the INS Officer issues to the individual a *Request for Final Court Disposition(s)* letter (Appendix A 10), unless the office has found another way to obtain the dispositions on behalf of an applicant, such as coordinating with an INS district office of Investigations, or the applicant has already submitted the required documents. If the individual is a dependent, the asylum office mails a copy of the letter, if any, to the P.A. (if she/he did not accompany the dependent).

If the applicant remains eligible for asylum after the follow-up processing is completed, asylum office personnel update the FBIT screen in RAPS with a "C" and process the case for approval.

If the applicant is not eligible for asylum due to derogatory information discovered in the clearance process, asylum office personnel follow the procedures above in section III(L)(7)(f)(iv), *Applicant Found Ineligible for an Asylum Approval*.

b. Waiver Granted Due to Advanced Age (75 and Older)

An applicant who is at least 75 years old is exempt from fingerprinting requirements. Before the asylum office may issue an *Asylum Approval*, the applicant must complete a *Sworn Statement (Fingerprints)* (Appendix A 9) before an INS officer regarding his/her background, and the asylum office must complete an *Asylum and NACARA § 203 Background Identity and Security Checklist* for the individual.

If the applicant admits to a criminal history during completion of the sworn statement, the INS Officer issues to the applicant a *Request for Final Court Disposition(s)* letter (Appendix A 10), unless the office has found another way to obtain the dispositions on behalf of an applicant, such as coordinating with an INS district office of Investigations.

When the sworn statement and police clearances (if necessary) have been received, asylum office personnel update the FBIT screen in RAPS with a "C" ("Police clearance") response.

Local asylum office management determines the procedures for completing the sworn statement. Due to the small number of applicants aged 75 years or older who apply for asylum, an asylum office may require an AO to complete the *Statement* at the time of the asylum interview. Therefore, if the applicant is eligible for asylum status and does not have a criminal record, the asylum office can immediately process the applicant to an *Asylum Approval*. This is particularly important for individuals interviewed at a circuit ride location. If it becomes necessary to call an applicant aged 75 or over to the office to complete a sworn statement, asylum office personnel issue an *Appointment for Sworn Statement – Waiver of Fingerprints (Age 75 or over)* letter (Appendix A 27).

If the applicant remains eligible for asylum after the follow-up processing is completed, asylum office personnel update the FBIT screen in RAPS with a "C" and process the case for approval.

If the applicant is not eligible for asylum due to derogatory information discovered in the clearance process, asylum office personnel follow the procedures above in section III(L)(7)(f)(iv), *Applicant Found Ineligible for an Asylum Approval*.

c. Waiver Granted Due to Unclassifiable Prints (Double REJECT Responses)

If the FBI has rejected an individual's fingerprints on two separate occasions, the individual must swear/affirm that s/he does not have a criminal record through the completion of a *Sworn Statement (Fingerprints)* (Appendix A 9). In addition, the individual must provide a "no record" statement from the police department in each U.S. locality where s/he has resided during the last five (5) years and provide any records relating to an arrest or conviction. If the applicant lives or lived in a jurisdiction that will not, as a matter of policy, give police clearance letters, asylum office personnel coordinate with District personnel with access to NCIC for a name and date-of-birth records check.

An individual must complete a *Sworn Statement* in front of an INS Officer. If the individual was interviewed at a circuit ride location and the asylum office is not scheduled to travel to that location in the near future, the asylum office must request the assistance of the INS district office where the individual resides to complete the sworn statement. If the individual was interviewed at the asylum office or at a circuit ride location where the asylum office will be visiting in the near future, the asylum office mails a *Rejection of Fingerprints for Background Clearance* (Appendix A 25) to the P.A.

The letter informs the P.A. that s/he has 60 days to submit a "no record" statement for the individual whose prints were rejected. Local asylum office policy dictates whether to schedule the applicant for a specific appointment with an INS Officer in order to complete the sworn statement, or whether to allow an applicant to come into the office anytime during office hours. If the rejected fingerprints pertain to a dependent, the asylum office does not require the P.A. to appear at the asylum office.

If the individual admits to a criminal history during the completion of the sworn statement, the INS Officer issues to the individual a *Request for Final Disposition* letter, unless the office has found another way to obtain the dispositions on behalf of an applicant, such as coordinating with an INS district office of Investigations, or the applicant has already submitted the required documents. If the individual is a dependent, the asylum office mails a copy of the letter, if any, to the P.A. (if she/he did not accompany the dependent).

If the applicant remains eligible for asylum after the follow-up processing is completed, asylum office personnel update the FBIT screen in RAPS with a "C" and process the case for approval.

If the applicant is not eligible for asylum due to derogatory information discovered in the clearance process, asylum office personnel follow the procedures above in section III(L)(7)(f)(iv), *Applicant Found Ineligible for an Asylum Approval*.

12. Failure to Follow Requirements for Fingerprint Processing

The procedures in this section govern the processing of the asylum application of an individual who has failed to follow requirements for fingerprint processing, either before or after a *Recommended Approval*. These procedures do not apply to individuals who have already been issued a conditional grant. Contact HQASM for guidance in processing an individual with a conditional grant who fails to comply with fingerprint processing requirements.

Langlois, Joseph E. INS Asylum Division. *Procedures for Applicants Who Fail to Comply with Fingerprint Processing Requirements,* Memorandum to Asylum Office Directors, et al. (Washington, DC: 20 August 2002), 8 p.

An applicant fails to comply with fingerprint processing requirements if s/he fails without good cause to:

- appear for an appointment for fingerprinting
- complete a required sworn statement regarding his or her criminal history
- submit requested documentation such as final disposition of an arrest from a RAP sheet or a required "no record" statement within 60 days from the date of the request.

8 C.F.R. § 208.10.

Failure to comply with fingerprint processing requirements may result in dismissal of the asylum application or a waiver of the right to an adjudication before an asylum officer (referral to EOIR).

a. Excusing a Failure to Comply with Fingerprint Processing Requirements

Asylum office Directors have discretion to excuse a failure to comply with fingerprint processing requirements if the applicant demonstrates good cause. Good cause is decided on a case-by-case basis by taking into account the individual circumstances of the applicant. A failure to comply with fingerprint processing requirements must be excused if the applicant demonstrates that the failure was the result of exceptional circumstances or the notice was not mailed to the applicant's current address and the address had been provided to the Office of International Affairs prior to the date the notice was mailed. 8 C.F.R. § 208.10. In other words, Asylum office Directors have *discretion* to excuse the failure to appear for reasons meeting the lower, "good cause" standard, but *must excuse* the failure both for reasons meeting the higher, "exceptional circumstances" standard and for improper notice as described in § 208.10.

Exceptional circumstances are established by showing circumstances no less compelling than serious illness of the applicant or serious illness or death of the applicant's spouse, child or parent. *See* Section 240(e)(1) of the Immigration and Nationality Act (INA).

Asylum office Directors may exercise discretion to excuse a failure to comply with fingerprint processing requirements for good cause until jurisdiction passes to EOIR with the filing of a charging document. If the applicant establishes either exceptional circumstances or improper notice (e.g., a timely address change notice was discovered filed in the wrong file) and the applicant has already been placed in proceedings before EOIR, Asylum office Directors must coordinate with District Counsel for a motion to terminate EOIR proceedings and reopen the case before the asylum office. If EOIR has already decided the case and denied asylum, the asylum office Director discusses with local District Counsel whether a Motion to Re-open or to Reconsider would be appropriate. If assistance is needed in resolving such cases, contact HQASM.

Asylum office Directors should contact HQASM for procedures for excusing a dependent's failure to comply with fingerprint processing requirements where the derivative asylum application was dismissed for such failure and the former dependent demonstrates either exceptional circumstances or improper notice under § 208.10 after the final approval was issued to the principal applicant.

b. Notice to the Applicant

i. Notifying the Applicant of a Request for Documents or Appointment for Sworn Statement

Asylum office personnel issue requests for final court dispositions and appointments for sworn statements under the following circumstances and with the following documents:

All correspondence discussed in this section that is directed to a dependent separate from the principal should be addressed to the dependent alone and copied under separate cover to the principal applicant.

- Applicant with a criminal record: If the asylum office does not have a mechanism in place to obtain official final disposition records (such as coordination with District Investigations), the asylum office mails a *Request for Final Court Disposition(s)* (Appendix A 10) letter to the principal applicant, which provides him/her 60 days to submit the required documentation.

- Applicant with rejected or waived fingerprints: If the FBI has rejected an individual's fingerprints on two separate occasions or a fingerprint requirement has been waived, the individual must swear/affirm that s/he does not have a criminal record through the completion of a sworn statement. In addition s/he must provide a "no record" statement from the police department in each U.S. locality where s/he has resided during the last five years, and provide the final disposition of any arrest. Asylum office personnel issue to the applicant a *Rejection of Fingerprints for a Background Clearance* (Appendix A 25) letter (rejected prints) or an *Appointment for Sworn Statement – Waiver of Fingerprints* (Appendix A 26) (waived prints).

- Applicant 75 years of age or older: An applicant aged 75 and older must swear/affirm that s/he does not have a criminal record through the completion of a sworn statement. If the applicant must be called in to complete the sworn statement, asylum office personnel issue the applicant an *Appointment for Sworn Statement – Waiver of Fingerprints* (Appendix A 27).

If the applicant fails without good cause to provide the requested documentation or respond to the request for a sworn statement by 60 days after the issuance of one of these letters to the applicant at the last address s/he provided, asylum office personnel process the case in accordance with procedures in section III(L)(12)(c), below.

ii. Determining Whether an Applicant Failed to Appear for a Fingerprinting Appointment

To determine that an applicant has failed to appear for a fingerprinting appointment, asylum office personnel confirm that:

- The applicant was scheduled to appear for fingerprinting.
- At least 60 days have passed and there is no current FBI clearance and no current FBI fingerprint clearance and no record of fingerprints having been received for processing in RAPS (CHIS) or FBIQUERY.
- The fingerprint appointment notice was sent to the correct address (as provided by the principal applicant).

The following guidance covers the procedures for making these determinations when the fingerprinting appointment was scheduled through RAPS.

(a) Verifying that the Applicant Was Scheduled for Fingerprinting and that No Fingerprints were Processed by FBI

In the first step, asylum office personnel verify that the applicant was scheduled for a fingerprint appointment by checking the Case History (CHIS) screen in RAPS.

When a fingerprint appointment was in fact scheduled, the action line in CHIS will read, "FINGERPRINTING SCHEDULED." If the case includes one or more dependents, it is important to note that this action line appears in CHIS for **the principal and each dependent separately**, with the applicable A-number on the left. RAPS may also show a date in the "F/P WINDOW ST" field on the CSTA screen to show the date the two-week fingerprint appointment started. When either CHIS or CSTA contains one of these updates, but no subsequent processing or result appears in CHIS or FBIQUERY for that applicant after 60 days from the last date the "FINGERPRINTING SCHEDULED" action appears, the file is documented with:

- A printout of the relevant CHIS or CSTA screen(s), with the appointment highlighted.
- A printout of the FBIQUERY screen showing that there is no current FBI clearance and no record of fingerprints having been received by the FBI for processing since the most recent fingerprint appointment.

For purposes of determining whether an applicant has failed to appear for fingerprinting, asylum office personnel may not rely on RAPS to determine whether fingerprints have been processed by FBI. The FBIQUERY system must be checked by A-number and, if no record is found, by name.

(b) Verifying Appointment Notice Was Sent to the Correct Address

In the second step, asylum office personnel verify that the fingerprint appointment notice was sent to the correct address, as provided by the principal applicant, at the time the notice was produced.

1. <u>Determining the Address in RAPS on the Date of the Fingerprint Appointment Request</u>

When a fingerprint appointment is requested through RAPS (either by the use of the FREQ command or bulk automatic scheduling requests), the applicant's record is "tagged" to be sent to the ASC for scheduling. This "tagging" includes the applicant's address in RAPS on the date of the request. Therefore, the applicant's correct address must have been in RAPS on the date that the appointment was requested.

Asylum office personnel can determine the date the fingerprint appointment was requested by looking for the date of the "FINGERPRINTS REQUESTED (FREQ)" (for individual requests) or "FINGERPRINTS AUTOMATICALLY REQUESTED" (for batch requests) action in CHIS. CHIS case history actions are displayed with two dates, a store date ("STORE DT") reflecting the date the RAPS entry took place, and event date ("EVENT DT") reflecting the date manually entered into RAPS as an effective date for this action. The store and event dates for the "FINGERPRINTS REQUESTED (FREQ)" (for individual requests) or "FINGERPRINTS AUTOMATICALLY REQUESTED" (for batch requests) actions should be the same, but if not, the store date should be used as the controlling date on which the correct address must have been in RAPS.

Asylum office personnel determine the address in RAPS on the date the fingerprint appointment was requested by reviewing the file, CHIS, the RAPS Address History (AHIS) screen, and the appointment mailer, if available. When making a determination as to when an address was entered into RAPS, asylum office personnel should be sure to look at the store date, rather than the event date, on the CHIS screen.

Example: Asylum office personnel examine the record of an applicant who is suspected of failing to appear for a fingerprinting appointment. CHIS contains a "CHANGE OF ADDRESS" action with an event date of February 1, 2001, and a store date of March 1, 2001. If the date of the action, "FINGERPRINTS REQUESTED (FREQ)" (for individual requests) or "FINGERPRINTS AUTOMATICALLY REQUESTED" (for batch requests) in CHIS is February 15, 2001 (indicating applicant's record was tagged for a fingerprint appointment on that date), *the new address was not yet in RAPS, and the appointment notice went to the prior address.*

2. <u>Procedures When RAPS Address was Correct on Date of Fingerprint Appointment Request</u>

If the RAPS address was correct on the date of the fingerprint appointment request, asylum office personnel initial (or name-stamp) and date the CHIS printout with the notation, "correct address confirmed." Asylum office personnel review the file to determine if the applicant's failure to appear is excused, in accordance with section III(L)(12)(a), above. If the applicant has shown good cause or exceptional circumstances for his/her failure to appear, asylum office personnel request a new fingerprint appointment using the FREQ command. If not, proceed to section III(L)(12)(c), below.

3. <u>Procedures When RAPS Address was not Correct on Date of Fingerprint Appointment Request</u>

If the fingerprint appointment request was not sent to the correct address, asylum office personnel:

- Check that the current address in RAPS is correct and update it using the MOVE command if necessary.
- Request a new fingerprint appointment using the FREQ command.

(c) Issuing Notice of Scheduling of Fingerprint Appointment

If it has been determined, pursuant to the guidance above, that the applicant failed to appear for a fingerprint appointment and the failure to appear is not excused, asylum office personnel issue to the applicant a *Notice of Scheduling of Fingerprint Appointment* letter (Appendix A 28). This letter should *only* be issued to an applicant with a recommended approval when a fingerprint appointment is being requested due to the applicant's failure to appear. (If the asylum office is requesting the scheduling of a fingerprint appointment for another reasons, the applicant will receive all the required information in the fingerprint notice generated by the fingerprint scheduler or manual notice issued by the asylum office.) The *Notice* notifies the applicant that s/he must appear for fingerprinting and contains a warning that this may be the final opportunity to appear, and that failure to comply with fingerprint processing requirements may result in cancellation of the recommended approval and dismissal of the asylum application or a waiver of an adjudication by an asylum officer and, if the applicant is out of status, placement in removal proceedings. At the same time the letter is issued, asylum office personnel request a new fingerprint appointment. If the asylum office Director has an arrangement with a local Application Support Center (ASC) to issue fingerprint appointment letters directly, s/he retains the discretion to do so. Otherwise, asylum office personnel request the new appointment using the FREQ command in RAPS.

Appendix A 28 should only be issued to an applicant when a fingerprint appointment is being requested due to the applicant's prior failure to appear.

If after issuing the *Notice of Scheduling of Fingerprint Appointment* (Appendix A 28) letter, asylum office personnel determine that the applicant failed to appear for this additional fingerprinting appointment without good cause or exceptional circumstances, the case is processed in accordance with section III(L)(12)(c), below.

c. Cancellation of the Recommended Approval and Dismissal or Referral of the Asylum Application

An applicant who has failed to comply with fingerprint processing requirements without good cause or exceptional circumstances will be processed as follows.

i. Principal Applicant Failed to Comply with Fingerprint Processing Requirements

If the recommended approval of the principal applicant is cancelled and the asylum application dismissed or referred for failure to comply with fingerprint processing requirements, the actions taken in the case apply to any dependents in the case as well, regardless of whether dependents complied with fingerprint processing requirements. Asylum office personnel:

- Prepare the *Cancellation of Recommended Approval and Referral (Fingerprints)* (Appendix A 29) or *Cancellation of Recommended Approval and Dismissal (Fingerprints)* (Appendix A 30) letter addressed to the principal and all dependents, depending on whether or not the applicant is maintaining lawful status.
- Update RAPS as follows:
    - On the DINT screen, enter "C" and the A-numbers of the principal and all dependents to record the issuance of the cancellation of recommended approval letter.
    - Remove the PDEC of GR using the CORR screen for the principal and all dependents.
    - On the FDEC screen, update principal and dependents as follows:

Status	Decision Code	Deport Code
Out-of-Status	I7	A1 (NTA), or A5 (I-863), if applicable
In-Status	D7	A6

- Serve the applicant by mail and follow regular procedures for post-service processing in section II(R) of this Manual.

ii. Principal Complied with Fingerprint Processing Requirements, but Dependent Failed to Comply

These procedures apply when the principal applicant complied with fingerprint processing requirements, but one or more dependents failed to comply. Asylum office personnel:

- Prepare the *Cancellation of Recommended Approval (Fingerprint-Out-of-Status)* or *Cancellation of Recommended Approval (Fingerprint-In-Status)* letter addressed to the dependent, depending on whether or not the dependent is maintaining lawful status.
- Prepare the final asylum approval of the principal applicant and all eligible dependents for issuance at the same time as the cancellation letter for the dependent who failed to comply with fingerprint processing requirements.
- Update RAPS as follows:
  - On the DINT screen, enter "C" and the dependent's A-number to record the issuance of the cancellation of recommended approval letter.
  - Remove the PDEC of GR on the CORR screen for the dependent who failed to comply.
  - Enter an FDEC of G1 for the principal and all eligible dependents, and D7 (regardless of status) for the dependent whose application is being dismissed. The deportation code for the dismissed dependent is A6 (no deportation) if s/he is in-status. If out-of-status, enter A1 if an NTA will be issued or A5 if an I-863 will be issued.
- Serve the applicant by mail and follow regular procedures for post-service processing as described in section II(R) of this Manual.

8 CFR 208.2

M. JURISDICTION

1. INS Jurisdiction

Special rules may apply to ABC/NACARA applicants. See the *ABC/NACARA Procedures Manual.*

INS Office of International Affairs has jurisdiction to adjudicate the asylum application filed by an alien physically present in the U.S., unless and until a charging document has been served on the applicant and filed with EOIR, placing the applicant under the jurisdiction of Immigration Court. For procedures governing cases in which the INS does not have jurisdiction because the applicant is not physically present in the United States, see section III(E), *Departing the U.S. Before a Final Decision*.

The Asylum Program does not take jurisdiction over applicants described in 8 CFR 208.2(c)(1), who are directed to file their asylum applications with the District Director for issuance of an I-863 and forwarding to the Immigration Court for an "asylum-only" hearing (stowaways, VWPP overstays/violators, crewmembers). For guidance on handling cases described in 208.2(c)(1), please see this Manual, section III(B)(1), *Aliens Not Entitled to Proceedings Under INA Section 240*.

8 CFR 3.14(b), 208.2(b)

Once a charging document is served on an applicant and filed with EOIR, the asylum office no longer has jurisdiction to adjudicate the applicant's I-589. Jurisdiction remains with EOIR until proceedings have been terminated. Administrative closure of EOIR proceedings is not sufficient to return jurisdiction to INS. If the asylum office discovers that an applicant is under the jurisdiction of EOIR, asylum office personnel take the following action:

a. EOIR Jurisdiction Discovered Prior to Service of Final Decision

Asylum office personnel:

- If discovered before the interview is completed, cancel or suspend the asylum interview.
- If discovered after the interview but prior to the Pick-Up date, send applicant *Notice of Change in Decision from Pick-Up to Mail-Out* (Appendix A 33) if there is sufficient time for notice to the applicant. If there is insufficient time, or the applicant appears for the pick-up, inform the applicant in person that INS does not have jurisdiction over the asylum application because the application is under the exclusive jurisdiction of EOIR. Remove any interview and decision data from RAPS using the Case Correction (CORR) and Remove Case from Interview Schedule (REMC) commands.
- Print the EOIR screen from RAPS and place in the file.
- Close the case in RAPS using the CLOS screen with close reason "IJ Jurisdiction" (C4).
- Indicate on the CLOS screen that the asylum office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- For a principal applicant, issue a *Notice of Lack of Jurisdiction* (Appendix A 59) letter. For a dependent, issue a *Denial of Derivative Status* (Appendix A 19) letter.
- Transfer the file to District Counsel if the applicant is currently in proceedings or to Investigations or Deportation (depending on local policy) if the applicant has a final order.

b. EOIR Jurisdiction Discovered After Service of Final Decision

i. Asylum office referred applicant to the IJ or issued final denial

Asylum office personnel:

- Remove decision data from RAPS using the Case Correction (CORR) command.
- Close the case in RAPS using the CLOS screen with close reason "IJ Jurisdiction" (C4).
- Indicate on the CLOS screen that the asylum office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- Issue a *Notice of Lack of Jurisdiction* (Appendix A 59) letter to the applicant.
- Transfer the file to District Counsel if the applicant is currently in proceedings or to Investigations or Deportation (depending on local policy) if the applicant has a final order.

ii. Asylum office issued recommended approval

Asylum office personnel:

- Prepare a short memo to the file that states why the record of the individual warrants a reversal of the decision to approve asylum status. Place the memo on the right-hand side of the A-file at the very top in order to alert a Trial Attorney to the processing before the asylum office.
- Update the Admin Close Update (CLOS) screen, indicating the case is under IJ jurisdiction (C4).
- Indicate on the CLOS screen that the asylum office will **NOT** issue an NTA/referral (Place "N' in the "Send to IJ " section).
- Prepare and issue a *Cancellation of Recommended Approval (Lack of INS Jurisdiction)* (Appendix A 22).
- Transfer the file to District Counsel if the applicant is currently in proceedings or to the District Director if the applicant has a final order.

iii. Asylum office issued final approval

Asylum office personnel follow procedures outlined in this Manual at Section III(W) for rescission of asylum based on lack of jurisdiction.

2. Asylum Office Geographical Jurisdiction

There are eight (8) asylum offices in the United States: Arlington, Chicago, Houston, Los Angeles, Miami, Newark (Lyndhurst, NJ), New York (Rosedale, NY), and San Francisco. Each asylum office has jurisdiction over all affirmative asylum applications filed by asylum applicants who reside within its geographical territory except for aliens described in the previous section, *INS Jurisdiction*.

See 8 CFR 100.4(f) for a list of asylum offices and their jurisdictions.

a. Residence of Applicant

8 CFR 208.4(b)(1) requires an applicant to file an I-589 with the Service Center servicing the asylum office having jurisdiction over an applicant's place of residence. "Residence" is defined in 101(a)(33) of the INA as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

A college student, for example, may move to another state during his/her summer vacation and submit an I-589. Although the individual may intend to return to college, which is located outside of the asylum office's jurisdiction, the student is, nevertheless, entitled to file for asylum with the asylum office having jurisdiction over his/her place of residence during the summer vacation.

An asylum office Director may, in his or her discretion, adjudicate an application for a college student when his or her permanent home address falls within the jurisdiction of the office, or make a similar accommodation for a migrant worker who frequently moves between jurisdictions.

There are instances when an asylum office may believe that an applicant does not live at an address s/he provides at an asylum interview. The address may be known to asylum office personnel as one that is linked to the location of a "boilerplate" asylum application preparer, or a "drop box." In these instances, an asylum office Director may exercise discretion to request proof that the applicant lives within the jurisdiction of the asylum office in order to determine whether the office has jurisdiction over the applicant. Any inquiries into or requests for proof of residence must be reasonable in light of the specific circumstances of the applicant including, but not limited to, language and cultural barriers, the availability or lack of family or financial resources, and the availability or inability to obtain documentation in the applicant's name.

Indicators that an applicant may not reside in the jurisdiction of the asylum office may arise before, during, or after the asylum interview.

If the asylum office requires evidence of an applicant's residence, the AO or SAO:

Check with local asylum office management about whether an AO must consult with an SAO or the Director before requesting evidence of an applicant's residence.

- Depending on the procedural stage of the case, cancels or terminates the interview.
- If the interview has already begun, explains to all parties (applicant, interpreter, representative) the reason for terminating the interview.
- Completes a *Request for Evidence to Establish Residence* letter (Appendix A 38), providing the original to the applicant and maintaining a copy in the file.
- Places the case on HOLD-AD in RAPS. This will stop the EAD clock.

If the applicant submits evidence that establishes his/her residence within the jurisdiction of the asylum office, asylum office personnel remove the case from HOLD, and reschedule the asylum interview using the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the fault of the applicant. The case can then be set for interview in accordance with regular scheduling priorities.

If the evidence submitted by the applicant or available in the file establishes the applicant's residence in the jurisdiction of another asylum office, asylum office personnel update the MOVE and TRAN screens and transfer the file to the office having jurisdiction.

If the applicant fails to submit evidence, or the evidence does not reasonably establish that the applicant lives within the jurisdiction of the asylum office, the asylum office conducts an asylum interview, exploring all factors that impact on the exercise of discretion. See AOBTC Lesson Plan, *Mandatory Bars to Asylum and Discretion*. After an interview, the applicant's asylum application may be referred as a matter of discretion if the negative factor (the applicant's failure to be forthcoming about his or her residence in the United States) outweighs the positive factors in the case. Discretionary referrals are submitted to HQASM/QA for review. If HQ concurrence is received, the referral is processed in accordance with regular procedures. The reason for the referral on the *Referral Notice* is explained in the "Other reason for referral section" as follows:

"On [date], INS requested proof of your residence in accordance with 8 CFR 103.2(b). You failed to submit evidence or the evidence you submitted was insufficient to establish your residence in the jurisdiction of this or any other asylum office. Because evidence indicates you were not forthcoming about your place of residence in the United States and provided false information on your asylum application, your asylum application is being referred to the Immigration Court, as a matter of discretion, using the address you provided on the asylum application and where you received notice of your asylum interview, which was conducted on [date]."

HQASM will consult with OGC regarding whether individuals who appear to be in-status may be referred and placed into removal proceedings on the basis of their failure to provide a valid address to the Service. Until this issue is resolved, please notify HQASM-Operations of any such cases.

3. Federal Court Jurisdiction

For the purpose of applying appropriate law, the AO must ascertain the federal court jurisdiction applicable to the alien's place of residence. The AO determines jurisdiction by the address of the applicant's residence, regardless of the address of the asylum office or the location of the interview.

N. MOTIONS TO REOPEN AND RECONSIDER

An asylum office Director, or his/her designee, need only consider a motion to reopen or reconsider for a case that has received a *Final Denial* from an asylum office. Because referred cases have not received a final decision, they are not entitled to reconsideration; however, an asylum office Director or his/her designee may reconsider a referral at his/her discretion.

Jurisdiction over a motion rests with the asylum office Director who has jurisdiction over the applicant's place of residence, even if that Director did not issue the decision that the applicant seeks to reopen or reconsider. An asylum office Director may seek to terminate an NTA that was served on the Immigration Court if s/he believes an egregious error may have been committed. Terminating an NTA must be coordinated with the Office of the District Counsel.

1. Types of Motions

8 CFR 103.5

The applicant or his/her representative of record must submit any motion within 30 days of the decision that the motion seeks to reopen or reconsider, except that failure to file a motion to reopen before this period expires may be excused in the discretion of the asylum office Director where it is demonstrated that the delay was reasonable and was beyond the control of the applicant.

a. Motion to Reopen

A motion to reopen must state new facts to be provided at the time of the submission of the motion, and must be supported by affidavits or other documentary evidence.

b. Motion to Reconsider

A motion to reconsider must claim that the decision was based on a misapplication of law or policy, and must be supported by pertinent precedent case law. The motion must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

2. Asylum Office Processing of a Motion

A Form I-290B, *Notice of Appeal*, or any other INS form, and filing fee are not required for either type of motion. When the asylum office receives a motion, asylum office personnel update the Motion to Reopen and Reconsider (MTRC) screen in RAPS to show the date of receipt.

3. Dismissing a Motion

The asylum office Director dismisses a motion that does not meet applicable requirements. Asylum office personnel prepare and issue to the applicant and any representative of record a written notice of dismissal. The written notice indicates either the dismissal is based upon a failure to file timely, or the motion did not meet applicable requirements. Asylum office personnel also update the Motion to Reopen and Reconsider (MTRC) screen in RAPS, indicating whether the motion was denied for "no new information" (D1) or "no new argument" (D2).

An asylum office Director has prosecutorial discretion to place an alien, who is not in a valid status, into proceedings before the Immigration Court.

a. Referred Cases

When the asylum office dismisses a motion made in a case that was previously referred, the asylum application continues to pursue his or her application in the Immigration Court.

b. Final Denials

When the asylum office dismisses a motion, the applicant may submit a new Form I-589. That application shall be subject to the same prohibitions on filing as any other newly-filed asylum application. Because the Service Centers are not trained to in-take new asylum applications on cases that have previously been denied, the applicant may file the application directly with the asylum office.

See Section II(C)(2) on filing a new asylum application after issuance of a final denial.

4. Granting A Motion

The asylum office must grant the motion if the applicant met regulatory requirements. Asylum office personnel notify the applicant and any representative of record in writing that the asylum office granted the motion. The Director, or his/her designee, determines whether the applicant will receive another interview or whether the case will be processed solely on the evidence in the record. Asylum office personnel also update the Motion to Reopen and Reconsider (MTRC) screen in RAPS, indicating that the motion was granted (G1), and whether RAPS should schedule an interview.

See Section II(J)(13) on reinterviews.

a. Asylum Office Upholds Decision to Deny/Refer

If the asylum office upholds the original decision to deny or refer, asylum office personnel issue to the applicant either a *Final Denial* or a *Referral Notice*, depending upon the applicant's immigration status at the time the office makes a decision and prepare the case for either a *Referral* or *Denial*. The previous information in RAPS should be deleted on the CORR screen to allow for the updating of the most recent decision on the merits of the claim. The AO then enters a new FDEC for the case.

b. Asylum Office Overturns Decision to Deny/Refer

If the asylum office overturns the original decision to deny or refer, asylum office personnel prepare the case as either a *Recommended Approval* or *Asylum Approval*, depending upon the status of the identity and security checks. The previous information in RAPS should be deleted to allow for the updating of the most recent decision on the merits of the claim.

O. NAME CHANGES

[FURTHER GENCOU GUIDANCE NEEDED]

P. OVERVIEW OF PRE-REFORM AND REFORM APPLICATION PROCESSES

The term *pre-reform* applies to applications filed prior to January 4, 1995. January 4, 1995, is the date that reform regulations took effect following a Presidential mandate to streamline the affirmative asylum process. The term *reform* applies to applications filed on or after January 4, 1995.

The main differences between a pre-reform application and a reform application relate to an applicant's ability to obtain employment authorization, and INS' ability to use an I-589 to establish alienage and deportability. First, applicants who filed for asylum prior to reform were not required to wait 150 days before filing a request for employment authorization. Second, some charging documents issued by an asylum office based upon information gleaned from an I-589 were rejected by immigration judges because they have generally taken the position that charging documents based solely on an asylum application filed prior to January 4, 1995, are insufficient. For all other purposes, the processing of pre-reform and reform applications is the same.

See Section III(G) for more information on employment authorization.

1. Overview of Processing Procedures – Pre-Reform vs. Reform

Prior to asylum reform, AOs either approved or denied asylum applications; they did not refer applications to the Immigration Court.

If an applicant was not eligible for an approval of asylum, an AO issued a *NOID*, regardless of the applicant's immigration status. The applicant was then given thirty (30) days to offer evidence in rebuttal to the reasons stated in the NOID. If the AO's decision did not change after a rebuttal was considered, or if no rebuttal was received, a *Final Denial* letter and charging documents were issued to any alien who was deportable or excludable. The applicant could then submit a new asylum application before the immigration judge. Applicants in valid immigrant, nonimmigrant, parole status or temporary protected status were not placed in deportation or exclusion proceedings and were issued only the *Final Denial* letter.

Under reform, after an interview has taken place, an AO finds an applicant: (1) eligible for an approval of asylum; or (2) ineligible for an approval of asylum. If an applicant in category (2) appears deportable or removable, the asylum office provides him/her a *Referral Notice*, indicating the reason(s) for the referral, and initiates removal proceedings by scheduling a hearing in immigration court and issuing an NTA. A referral is not a final decision in the case and an immigration judge will hear the applicant's claim anew. An applicant in category (2) who is in-status receives a *Final Denial* letter without an accompanying NTA at the time the final decision is rendered.

2. Applications Interviewed before January 4, 1995 but Still Pending a Final Decision

There may be still be a small number of asylum applications pending for applicants who were interviewed prior to January 4, 1995, but whose applications are still pending a final decision. If the asylum office marked the case with a special group code, then the reason for its pending status may result from an HQASM policy that suspends final adjudication of the I-589. If a special group code is not present, asylum office personnel process the case for a final decision according to the following instructions:

a. Applicants Eligible for Asylum Status

If the applicant is eligible for asylum status, the asylum office prepares case for an approval.

b. Applicants Ineligible for Asylum Status

An applicant who was interviewed prior to reform may have an expectation that his/her case will be processed according to procedures in place at the time of interview. However, because current regulations only give an AO the authority to deny asylum to an applicant who is in-status, a *Final Denial* cannot be issued to an applicant who is deportable or removable. The AO must, therefore, process the case as follows:

Different rules are in place for ABC applicants. *See* ABC/NACARA Procedures Manual for more information.

- Issue a *NOID* regardless of the applicant's present immigration status. If the applicant is not maintaining valid immigrant, nonimmigrant or Temporary Protected Status, the AO changes the language of the *NOID* to reflect that it is a notice of intent to *refer* the asylum application to the immigration court, since the asylum office does not have the legal authority to deny an application to an out-of-status applicant.
- If the applicant is found ineligible for asylum status after the rebuttal period and s/he is still maintaining a valid status or parole is not terminated; prepare the case for a final denial.
- If the applicant is found ineligible for asylum status after the rebuttal period and s/he is deportable, or removable, or parole is terminated prepare the case for a referral.
- If the applicant is found eligible for a grant of asylum, prepare the case for an approval.

c. Evidence of Deportability/Removability

If required by the Executive Office for Immigration Review in the jurisdiction of the asylum office, asylum office personnel may be required to obtain evidence of deportability or removability from documents other than the pre-reform I-589, particularly in the case of a no-show. Examples of possible sources of evidence are:

Entered Without Inspection	Admitted to the U.S.
• I-765 applications in the file	• NIIS data
• CLAIMS data	• I-94 and/or passport, when available
• I-213 (completed by an office other than asylum)	• I-765 applications in file
	• CLAIMS

In addition to the above supporting evidence, the asylum office may be required to prepare an I-213, even if not normally required with the referral of a reform case. An I-213 can be prepared with the RAPS Forms Generation Module on the OSCG/OSCP screens.

Q. PAROLEES

This section outlines the processing procedures for parolees who are found ineligible for asylum status.

Langlois, Joseph E. Asylum Division. *Processing Parole Cases*, Memorandum to Asylum Office Directors (Washington, DC: 21 September 1998), 10 p.

1. Pre-April 1, 1997 Parolees and Advance Parolees

a. Applicants with Valid Parole Granted for the Purpose of Applying for Asylum

Asylum office personnel:

- Prepare a NOID
    - If the applicant's rebuttal overcomes the reasons for denial, the case should be prepared as an approval.
    - If the applicant's rebuttal does not overcome the reasons for denial, or the applicant fails to submit a rebuttal, the AO continues with the next steps.
- Prepare a *Final Denial – Parole* (Appendix A 58), NTA, and Form I-213, if required. To prepare the NTA on the OSCG screen in RAPS, use the charge PRL1 to charge as an intending immigrant, PRL2 for nonimmigrants. PRL1 should be sufficient for most cases, but PRL2 may be appropriate on occasion. Consult with local District Counsel for the appropriate charges.
- Update an FDEC of D1-D7 in RAPS, with a deport code of A1.

The asylum office denies an applicant in parole status because until an NTA is served, the applicant's parole status remains valid. Once an NTA is issued, parole terminates, so the applicant is deportable/ removable. See 8 CFR 212.5(d)(2)(i).

b. Applicant with Valid Parole Granted for Other Reasons

If an applicant was paroled for a purpose other than to apply for asylum, and it appears to asylum office personnel that the purpose for parole has been served, asylum office personnel should consult with the local district office. If the district office agrees that the purpose for parole has been served and should be terminated, the case is processed according to instructions in (1)(a) of this section. If parole will not be terminated, asylum office personnel:

- Prepares a NOID
    - If the applicant's rebuttal overcomes the reasons for denial, the AO prepares the case as an approval.
    - If the applicant's rebuttal does not overcome the reasons for denial, or the applicant fails to submit a rebuttal, the AO continues with the next steps.
- Prepares a standard *Final Denial* letter, which does **not** refer to termination of parole.
- Updates an FDEC of D1-D7 in RAPS, with a deport code of A6.

c. Applicant with Expired or Terminated Parole

If an applicant's parole is expired or terminated at the time of decision issuance, asylum office personnel process the case as a referral, using the charges discussed in 1(a) above for the NTA.

2. Applicants who were Paroled on or after April 1, 1997 (not pursuant to advance parole)

In the case of an applicant who was paroled into the U.S. on or after April 1, 1997, and the parole was not pursuant to advance authorization for parole prior to departure from the U.S., the AO takes the following action, depending upon the validity of the applicant's parole and the applicable inadmissibility grounds.

a. Parole Valid at the Time of Preliminary Decision

An AO issues a NOID to an applicant found ineligible for asylum whose parole is valid or has not been terminated by the time the case is initially prepared for a decision.

b. Parole Valid at Time of Final Decision

i. Applicant paroled to apply for asylum

Because the purpose of the applicant's parole has been accomplished, parole must be terminated. Asylum office personnel follow instructions in (2)(d)(i) of this section if the applicant is inadmissible to the U.S. under section 212(a)(6)(c) or 212(a)(7) of the Act (expedited removal grounds).

If the applicant is inadmissible to the U.S. under sections of the Act other than 212(a)(6)(c) or 212(a)(7), asylum office personnel follow instructions in (1)(a) of this section. The applicant is not subject to expedited removal, so a credible fear determination is not required.

ii. Applicant paroled for reasons other than to apply for asylum

If it appears to asylum office personnel that the purpose for parole has been served, asylum office personnel should consult with the local district office. If the district office agrees that the purpose for parole has been served and should be terminated, asylum office personnel follow instructions in (2)(d) of this section. If parole is not terminated, asylum office personnel following instructions in (1)(b) of this section.

c. Parole is Expired or Terminated at the Time of Interview

This section applies to applicants whose parole has already expired or was terminated by the time of the asylum interview.

i. Applicant is inadmissible under section 212(a)(6)(c) or 212(a)(7)

At the asylum interview, the AO:

- Informs the applicant that, if the asylum office does not approve the asylum application, he or she will be subject to expedited removal.
- Describes the expedited removal (ER) process before the asylum interview begins.
- Asks the applicant protection questions, as required under the Convention Against Torture (CAT), in addition to the questions about mandatory bars. These questions are necessary in the event the AO finds that the applicant does not have a credible fear of persecution.
- Performs a regular affirmative asylum interview.

If the applicant is found eligible for asylum, the AO prepares the case as an approval.

If the applicant is found <u>ineligible</u> for asylum, the AO must make a credible fear finding.

(a) AO finds credible fear of persecution OR torture:

- The AO places an assessment of the credible fear claim at the end of the affirmative asylum assessment.
- The AO prepares the case as a referral.
- Asylum office personnel notify the D&R unit of the district office having jurisdiction over the applicant's address that an NTA was issued on an alien who is subject to expedited removal.

(b) AO does NOT find a credible fear of persecution OR torture:

- The AO places an assessment of the credible fear claim at the end of the affirmative asylum assessment.
- The asylum office submits the case to HQASM/QA for a mandatory review.
  - If HQASM/QA does not concur, the asylum office amends the decision and processes the case under (2)(c)(i)(a) of this section.
  - If HQASM/QA concurs in the decision, the asylum office must re-interview the applicant under credible fear procedures, so the case should be given to the APSO Supervisor. The asylum office also notifies the D&R unit of the district office of an alien who is subject to expedited removal.

ii. Applicant is inadmissible under a section other than 212(a)(6)(c) or 212(a)(7)

Asylum office personnel follow instructions in (1)(c) of this section. The applicant is not subject to expedited removal, so a credible fear determination is not required.

d. Parole Expired or is Terminated after the Interview but Before a Preliminary or Final Decision

This section applies to applicants: (1) who were previously issued a NOID but the parole has either expired or the parole is terminated before a final decision (FDEC), or (2) whose parole was valid at the time of interview, but the parole expired or was terminated before a preliminary decision (PDEC).

i. Applicant is inadmissible under section 212(a)(6)(c) or 212(a)(7)

The AO must determine whether the applicant has a credible fear of persecution or torture based upon the information gathered at the time of the interview and in any rebuttal, if the applicant was previously issued a NOID.

- If a NOID was issued the AO prepares a memo to the file that contains the credible fear determination.
- If a NOID was not issued, the AO places an assessment of the credible fear claim at the end of the affirmative asylum assessment.

After making a credible fear determination, the AO processes the case according to instructions in (2)(c)(i) of this section.

ii. Applicant is inadmissible under a section other than 212(a)(6)(c) or 212(a)(7)

The applicant is not subject to expedited removal, so a credible fear determination is not required. The application is processed as a referral or referral after NOID, with the charges described in part 1(a) of this section.

3. Dependents who are Parolees

There are instances when the dependent is a parolee, but the P.A. was not paroled. If the asylum office is referring the P.A. to the Immigration Court, the following special procedures must occur for the dependent who was paroled:

a. Dependent Paroled Prior to April 1, 1997 or Pursuant to Advance Parole

i. Parole expired or terminated

The AO refers the dependent to the Immigration Court along with the P.A. if the dependent was paroled for the purpose of applying for asylum, the parole has expired, or the asylum office is terminating the parole of a dependent who was paroled for reasons other then to apply for asylum. If the parole is expired, no special procedures apply. If the asylum office is terminating parole, asylum office personnel insert the following paragraph in the *Referral Notice* directly before the paragraph on employment authorization, or if the application was filed before January 4, 1995, directly before the closing salutation:

> "The attached Notice to Appear (Form I-862) for your [spouse/child], [Name], [A-number], constitutes written notice of termination of [his/her] parole pursuant to 8 CFR 212.5(d)(2)(i)."

ii. Parole valid

If the dependent was paroled for reasons other than to apply for asylum and that parole remains valid, the asylum office normally does not terminate parole. If parole is not terminated, the AO uses the standard *Referral Notice*; however, the name and A-number of the dependent is *not* included on the *Notice*. The AO also inserts the following paragraph directly before the paragraph on employment authorization, or if the application was filed before January 4, 1995, directly before the closing salutation:

> "Because your **[spouse/child], [Name], [A-number]**, who was listed on your asylum application as a dependent, does not appear deportable or removable, we are not placing him/her in immigration court proceedings along with you."

b. Dependent Paroled After April 1, 1997

If the dependent's parole remains valid or is not terminated, the AO follows instructions in (3)(a)(i) of this section. If the dependent's parole has expired or is terminated, the asylum office should make a credible fear finding as outlined in (2)(c) of this section, and refer the dependent to the Immigration Court along with the P.A.

R. PROHIBITIONS ON FILING AN ASYLUM APPLICATION

Certain aliens are not eligible to apply for asylum; however, only an AO or an Immigration Judge (IJ) can make this determination after an interview has been conducted. Therefore, the Service Center and the asylum office accept asylum applications without regard to whether a prohibition on filing may apply.

8 CFR 208.4

Langlois, Joseph E. INS Asylum Division. *Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 4 January 2002), 14 p.

1. Categories of Aliens who May not Apply for Asylum

The categories of aliens who are prohibited from filing for asylum are listed below. These prohibitions only apply to an applicant who applies for asylum on or after April 1, 1997:

- Any alien who has not filed an application for asylum within one year of last arrival in the U.S., unless the alien establishes changed circumstances that materially affect his/her eligibility for asylum or extraordinary circumstances directly related to the delay in filing.
- Any alien who previously has been denied asylum as a principal applicant by an immigration judge or the BIA (EOIR), unless the alien establishes the existence of changed circumstances that materially affect the applicant's eligibility for asylum.

If the applicant was a dependent on a prior I-589 that was denied by the IJ, the prohibition on filing does not apply. 8 CFR 208.14(f)

- Any alien who may be removed to a "safe third country" pursuant to a bilateral or multilateral agreement. Currently no such agreement exists, so this prohibition is not examined in the course of an asylum interview.

The Attorney General has announced the intention of the U.S. to enter into a "safe third country" agreement with Canada. HQASM will issue further guidance when such an agreement is in effect.

Procedures governing the first two prohibitions against filing an asylum application are outlined below.

2. One-Year Filing Deadline

INA §§ 208(a)(2)(B), (D) and 8 CFR § 208.4(a)(2), (4).

Any asylum applicant who applied for asylum on or after April 1, 1998 (or April 16, 1998, for those applying with the INS), must establish that he or she filed for asylum within one year from the date of last arrival in the U.S. or establish that he or she is eligible for an exception to the one-year filing requirement based on changed circumstances that materially affect the applicant's eligibility for asylum or extraordinary circumstances directly related to the delay in filing the application. An application with a filing date on or before April 15, 1998, is not subject to the one-year filing deadline as implemented by the Asylum Division. Although April 1, 1998, is the effective date provided by regulation for those who arrived before April 1, 1997, the INS extended an administrative 14-day grace period for applications filed with the INS. This 14-day period only applies to those applications filed in the first 15 days of April 1998.

Only an asylum officer, IJ, or the BIA is authorized to make the determination of whether the applicant established an exception to the one-year filing deadline. An asylum interview is the method INS uses to determine an applicant's eligibility to apply. Therefore, asylum applications are accepted for filing regardless of whether the applicant filed timely.

a. Calculating the One-Year Period and Determining the Filing Date

The methods for calculating the one-year period within which the applicant was required to file and determining the filing date and substantive guidance for the adjudication of cases affected by the one-year filing deadline are contained in the AOBTC Lesson Plan *One-Year Filing Deadline*.

b. Interview

Regardless of the filing date of an application, asylum officers are to give all applicants an asylum interview. This includes pre-interview familiarization with general country conditions and post-interview research of specific country conditions relevant to the applicant's situation, where applicable.

c. Analysis and Assessment

i. Applicant Established an Exception to the One-Year Filing Deadline

When an applicant has established an exception to the one-year filing deadline, asylum officers must include a brief analysis of the one-year filing deadline issue in the assessment to grant or refer. The analysis should include the changed and/or extraordinary circumstances established and a finding that the applicant filed within a reasonable time given the circumstances. If the exception(s) established are based on country conditions, country reports must be cited.

ii. Applicant Did Not Establish an Exception to the One-Year Filing Deadline

Referral of an application based on the one-year filing deadline is mandatory for applicants who meet all of the following criteria:

- The I-589 was filed on or after April 16, 1998.

AND

- The applicant has not established by "clear and convincing" evidence that s/he filed an application for asylum within one year of his or her last arrival by establishing either:
  1) clear and convincing evidence that the date of last arrival is within the applicable 1-year period **or**
  2) clear and convincing evidence that the applicant was outside the United States during the year immediately preceding the filing date.

AND

- No changed circumstances or extraordinary circumstances apply, or if any do apply, the application was not filed within a reasonable period of time given those circumstances.

(a) Assessment Requirements

When a case is referred to the IJ based on the one-year filing deadline, officers are not required to include in the referral assessment a full account of the material facts of the applicant's claim, nor must they discuss whether an applicant has established past persecution or has a well-founded fear. The assessment must include all of the following information:

Note: There may be exceptions to these requirements. If the information is unavailable, the assessment must contain an explanation of the reasons why a required item is not included. For example, if the asylum officer found that the applicant's country of citizenship was not established, or the applicant has not established a protected characteristic, the asylum officer should explain his or her finding.

- brief biographical information about the applicant such as age, gender, country(ies) of birth and citizenship; date, place, and manner of last arrival including date status expired, if applicable; and the date the I-589 was filed

- identification of the protected characteristic(s) (race, religion, nationality, political opinion, or membership in a particular social group) relevant to the applicant's claim and a brief statement of the harm feared (e.g., "Applicant fears she will be persecuted by the FARC on account of her political opinion.")

- a statement and supporting analysis of the finding that the applicant was found ineligible for an exception based on changed circumstances relating to country conditions because: 1) there was no change in country conditions, 2) the change occurred before April 1, 1997, 3) the change did not materially affect the applicant's asylum eligibility, or 4) the I-589 was not filed within a reasonable time after the change, considering delayed awareness if applicable. This finding and analysis must be supported by a specific description, with citations, of country conditions pertinent to the protected characteristic(s) relevant to the applicant's claim, if any. The time period covered by the description and citations is determined on a case-by-case basis, and may depend on whether a change in country conditions has been asserted by the applicant. Generally, the relevant country conditions would be the period beginning approximately 24 months before the date of filing and ending on the date of the decision in the case.

Note: There may be cases in which country conditions are not relevant to the determination of changed circumstances because a change in country conditions would not materially affect the applicant's eligibility for asylum (e.g., where the applicant has not established a protected characteristic, the applicant is subject to a mandatory bar, and/or claims no fear of returning to his/her country of origin.) In such a case, no description or citation of country conditions information is required to support the finding of no changed circumstance materially affecting the applicant's asylum eligibility. The asylum officer should include in the assessment the statement, "Any change in country conditions would not materially affect the applicant's eligibility for asylum because (the applicant has not established a protected characteristic, entered the U.S. solely for economic reasons, etc.)" and an explanation of the reasons for the finding of no protected characteristic, no fear, or other reason country conditions would not materially affect the applicant's asylum eligibility. A finding that country conditions are not relevant would not be appropriate merely because the asylum officer would have found the applicant ineligible for asylum. This finding should be reserved for cases such as those where the applicant clearly has no protected characteristic, no fear, or is clearly subject to a mandatory bar.

- a statement demonstrating that other possible changed and extraordinary circumstances relating to the applicant's case were examined, but the applicant was found ineligible for an exception based on those circumstances and why (for example, the circumstances are not deemed extraordinary, or the changed circumstances did not materially affect the applicant's asylum eligibility), OR, if the applicant was found ineligible for an exception based on an unreasonable delay in filing after changed or extraordinary circumstances, a thorough analysis of why the asylum office found the delay in filing to be unreasonable given those circumstances.

(b) Country Conditions Citations

Except as indicated above, an assessment to refer based on the one-year filing deadline must reflect that the officer reviewed country conditions to confirm that there has been no change that materially affects the applicant's eligibility for asylum. When country conditions are relevant to the applicant's asylum eligibility, the assessment must contain at least two country conditions citations to support a finding that the applicant has not established an exception based on changed circumstances. The time period covered by the citations is determined on a case-by-case basis, but generally must cover the period beginning 24 months preceding the filing date, and ending on the date of the decision. It is preferable that the two citations be from different sources, however they may be from the same issuing organization or agency if another source cannot be found. These guidelines have been developed as a minimum safeguard to document that, where required, country conditions have been examined for changed circumstances before an application is referred. Certain cases may require a broader review of country conditions or citations to more than two sources. For further guidance on using and citing appropriate country conditions, see AOBTC Lesson Plan, *Country Conditions Research and the Resource Information Center (RIC)*.

Although the burden of proof is on the applicant to establish the exception, asylum officers must consult country conditions information relevant to the applicant's claim, where appropriate, to determine whether there are changed country conditions that materially affect the applicant's eligibility for asylum. For more discussion about the "cooperative" role of the asylum officer and the applicant's burden of proof, see the AOBTC Lesson Plan, *One-Year Filing Deadline*.

d. Date of Entry (DOE) in RAPS

The date of entry is recorded in RAPS according to whether the applicant met his or her burden of proof. Regardless of the claimed manner of entry, whenever the applicant has failed to meet the burden of proof with respect to his or her last arrival date, no date shall be entered into the DOE (Date of Entry) field on the I589 or OSCG screens. When the field is left blank, the words "UNKNOWN DOE" will automatically be printed on the NTA and the I-213 (where applicable). Asylum officers must address any credibility issues relating to the date of entry in the assessment. For guidance on the applicant's burden of proof and determining the appropriate standards of proof required for entry dates, see AOBTC Lesson Plans *One-Year Filing Deadline* and *Asylum Eligibility Part IV – Burden of Proof and Evidence*.

e. Preparing the Decision

i. Applicant Established an Exception

Asylum office personnel process the approval, referral, and denial of the application of an applicant who established an exception to the one-year filing deadline in accordance with regular decision procedures. *See* section II(N), *AO Prepares the Decision*.

ii. Applicant Did Not Establish an Exception

Asylum office personnel process a referral based solely on the one-year filing deadline in accordance with regular referral procedures, except for the entry of the FDEC decision code and the issuance of the referral letter. The decision code for a one-year filing deadline referral is **I5**. The referral letter specific to one-year filing deadline referrals is Appendix A 54, *Referral – 1-year Deadline*.

3. Previous Denial of Asylum by EOIR

a. Receiving the I-589

An applicant who was previously denied asylum by an IJ or the BIA (EOIR) may file his/her I-589 with a service center or with an asylum office directly. An application that has been filed with a service center should be forwarded to the asylum office having jurisdiction over the applicant's address for input into RAPS.

HQASM is currently working with INS Immigration Services Division to establish nation-wide consistent Standard Operating Procedures for service centers.

On the same day of receipt, an I-589 initially filed at an asylum office is date-stamped and brought to the attention of an SAO or QA/T, depending on local policy. *See* section II(C)(2), *I-589 Filed Directly with the Asylum Office*. The SAO or QA/T determines whether the I-589 fits into one of the categories for which direct filing is permitted. After the SAO or QA/T determines that the applicant is permitted to file directly with the asylum office because of a prior denial by EOIR, asylum office personnel review it to ensure completeness. An incomplete application should be returned to the applicant with a written explanation of what is missing and instructions to re-submit the application.

When a complete I-589 has been received, asylum office personnel check the applicant's personal information against CIS, DACS and RAPS for duplicate A-files. Asylum office personnel locate and order the applicant's A-file(s), and create a T-file pending receipt. If there is a prior record of the applicant in RAPS, asylum office personnel take the following actions on the same day the application was received:

i. Applicant was a Principal on the Prior Application

- Print both pages of the CSTA screen containing the information about the previous asylum application. place the printouts on the right-hand side of the file.
- Delete the information from the previous asylum application from RAPS using the REIN command. Delete the filing date of the previous application using the CORR screen, and enter the new filing date.
- Update biographical and entry information on the I589 screen, if applicable.
- If the asylum office that accepts the application is not the same office that adjudicated the previous application, the asylum office that has the new application must contact the asylum office that adjudicated the previous application to request that it update RAPS as indicated above, and update the MOVE and TRAN screens to transfer the case to the asylum office with jurisdiction over the new application.

ii. Applicant was a Dependent on the Prior Application

- Print all pages of the CSTA and CHIS screens and place on the right-hand side of the file.
- Create a new record of the applicant in RAPS as a principal, using the NEWC command, in conjunction with the REIN command. Delete the filing date of the previous application using the CORR screen, and enter the new filing date.
- Update the biographical and entry information on the I589 screen, if applicable.
- If the asylum office that accepts the application is not the same office that adjudicated the previous application, the asylum office that has the new application must contact the asylum office that adjudicated the previous application to request that it update RAPS as indicated above, and update the MOVE and TRAN screens to transfer the case to the asylum office with jurisdiction over the new application.

b. Eligibility to Apply

An individual who was previously denied asylum as a principal applicant by an IJ or the BIA (EOIR) may not file a new application for asylum on or after April 1, 1997, unless there are changed circumstances which materially affect the applicant's asylum eligibility. INA § 208(a)(2)(C), (D); 8 CFR § 208.4(a)(3), (4).

If the applicant was a dependent on a prior I-589 that was denied by the IJ, the prohibition on filing does not apply. 8 CFR 208.14(f)

A prior denial of asylum by an asylum officer does not invoke the prohibition on filing a new asylum application. 8 CFR § 208.4(a)(3). An asylum office may consider a new affirmative asylum application from an applicant who was previously denied asylum by an asylum officer as long as the applicant remains within the jurisdiction of the asylum program pursuant to 8 CFR 208.2. New asylum applications filed by applicants previously denied asylum by an asylum officer are adjudicated according to regular procedures except that:

- Guidelines regarding case assignment discussed below in this section should be followed whenever practicable; and

- Substantial deference should be accorded to prior determinations made by an asylum officer regarding previously established facts, including credibility findings, unless clear error is present.

c. Jurisdiction

In most cases in which an applicant is denied asylum by an IJ or the BIA, the Asylum Division does not have jurisdiction over a subsequently filed application, because necessarily a charging document had been served on the applicant and filed with EOIR, which then retains exclusive jurisdiction under 8 CFR § 208.2. However, if the applicant left the United States after being denied asylum by EOIR and then returned, the Asylum Division may have jurisdiction to consider an affirmative asylum application filed by that applicant in the following instances:

- applicant was removed from or departed the United States under an order of removal, deportation or exclusion, and subsequently made a **legal** entry

- applicant departed the United States **after the expiration** of a voluntary departure period, thus becoming subject to a deportation or removal order, and subsequently made **legal** entry

- applicant departed the United States **before the expiration** of a voluntary departure period, and subsequently made a **legal or illegal** entry.

These procedures **do not apply** to applicants who entered the United States illegally after having been removed, deported, excluded or after having left the United States while under an order of removal, deportation, or exclusion, and are therefore appear to be subject to reinstatement of the prior order, unless the District Director has specifically declined to reinstate the order in a particular case. INA § 241(a)(5); 8 CFR § 241.8. For procedures governing applicants who may be subject to reinstatement of a prior removal order, see section III(U), *Reinstatement of a Prior Order.*

Examples:

1. A second A-file is discovered for an applicant when he is enrolled into the IDENT-Asylum database. Upon examination of that file, asylum office personnel note that it contains a 1995 immigration judge order denying asylum and ordering deportation. No appeal was filed. The asylum applicant was lawfully admitted in June 2001 on a B-2 visa, and subsequently filed an affirmative asylum application. The asylum office has jurisdiction to consider the new affirmative asylum application because the applicant made a legal entry after departing under the deportation order.

2. During pre-interview preparation, the asylum officer discovers a 1989 immigration judge order denying asylum and granting voluntary departure. The file contains a record verifying the applicant's timely voluntary departure. The applicant crossed the border illegally into the United States in August, 2001 and applied for asylum. The asylum office has jurisdiction to consider the new affirmative asylum application even though the applicant made an illegal entry because the applicant re-entered the U.S. after timely complying with the voluntary departure order.

3. The asylum officer discovers through the FBI clearance process that the applicant was denied asylum in 1997 and ordered removed. The applicant claims never to have left the United States, and there is no evidence of departure and subsequent entry. The asylum office does not have jurisdiction to consider the new affirmative asylum application because the applicant has not departed and re-entered the U.S. The applicant's asylum application remains under the exclusive jurisdiction of EOIR.

4. A review of the EOIR screen shows that the applicant was previously denied asylum by an immigration judge and was granted voluntary departure. The applicant filed an appeal with the Board of Immigration Appeals, which was dismissed some time later. She departed the U.S. after the expiration of the voluntary departure period, and thus became subject to a removal order. She was admitted to the U.S. in April 2001 with a passport she acknowledges is fraudulent. The asylum office does not have jurisdiction to consider the new affirmative application because the applicant left the United States under a removal order and the applicant's subsequent entry was not lawful. The applicant may be subject to reinstatement.

d. Case Assignment

If the applicant is applying for the second time in the same asylum office that issued the prior adverse decision, asylum office personnel will make a reasonable attempt to assign the case to the same officer who made the original decision. This is to promote consistency with prior factual determinations and discourage forum shopping through the submission of another asylum application in the absence of changed circumstances. If the same asylum officer is unavailable, the case should be assigned to an officer supervised by the same SAO who signed off on the original decision. If the original AO and SAO are unavailable, the case may be randomly assigned according to regular office procedures.

e. Interview

In order to determine whether the changed circumstances that materially affect the applicant's eligibility for asylum, the asylum officer interviews the applicant and reviews the record regarding the previous application (including any findings made by EOIR that may be in the file) for a thorough understanding of the basis for the applicant's claim. The focus of the interview reflects the procedural stage of the case in that the asylum officer is determining whether there has been a change in circumstances after the decision on the original application, and is not entertaining an appeal of the decision made by EOIR. The asylum officer need not re-visit the details of the original asylum claim, unless it is necessary to the determination of asylum eligibility once the applicant has established changed circumstances. Findings of fact made by EOIR, including credibility determinations, must be upheld and cannot be reconsidered. The application of law to the applicant's original case also must be upheld, unless the applicant establishes changed law material to his or her eligibility for asylum. Therefore, the interview focuses on whether any changed circumstances have occurred after the applicant was denied asylum by EOIR that may materially affect the applicant's eligibility for asylum, and any information needed to make an asylum eligibility determination if changed circumstances are established.

f. Determination and Assessment

Asylum officers make the determination of whether there are changed circumstances using the same guidance outlined in the AOBTC Training Materials Lesson Plans, *One-Year Filing Deadline* and *Mandatory Bars to Asylum and Discretion*. The entire file, including the prior application, supporting evidence and previous assessment or decision is reviewed prior to making a determination in the case.

i. Applicant Established Changed Circumstances that Materially Affect Asylum Eligibility

If the applicant established changed circumstances that materially affect his/her eligibility for asylum, the asylum officer makes a determination of asylum eligibility based on the merits of the claim, keeping in mind that factual determinations made by EOIR may not be reconsidered, and legal determinations must be upheld except to the extent there has been a change in the law. Regardless of whether the application is denied, referred or approved, the assessment (or Notice of Intent to Deny (NOID), if applicable) will contain (in addition to the information specified in the applicable decision template):

- a brief statement that the applicant was previously denied asylum by EOIR
- an explanation of the changed circumstances established
- how the changed circumstances materially affect the applicant's asylum eligibility
- an analysis of the merits of the claim in light of the changed circumstances.

Where the established changed circumstances relate to country conditions, the asylum officer must cite to country conditions reports to support the finding.

ii. Applicant Did Not Establish Changed Circumstances that Materially Affect Asylum Eligibility

If the applicant did not establish changed circumstances that materially affect his/her eligibility for asylum, the application will be referred or denied based on the prohibition on filing for asylum after a prior denial by EOIR. Asylum officers are not required to include in the assessment or NOID a full account of all material facts or an analysis of the applicant's asylum claim. The assessment or NOID must include:

- brief biographical information about the applicant such as age, gender, country(ies) of birth and citizenship; date, place, and manner of last arrival including date status expired, if applicable; and the date the I-589 was filed.
- identification of the protected characteristic(s) (race, religion, nationality, political opinion, or membership in a particular social group) relevant to the applicant's claim and a brief statement of the harm feared (e.g., "Applicant fears he will be persecuted by the LTTE on account of his political opinion.").
- a statement of any circumstances that were considered in the determination of whether the prohibition against filing for asylum applies.
- a statement and an explanation of the finding that there were no changed circumstances, OR, if the applicant established the existence of changed circumstances, why the circumstances were not found to materially affect his/her asylum eligibility.

- Where country conditions are relevant to the determinations of changed circumstances, the assessment must contain a minimum of two country conditions citations supporting the finding that the applicant failed to establish a change in country conditions or that any change in country conditions materially affects the applicant's asylum eligibility. It is preferable that the two citations be from different sources, however they may be from the same issuing organization or agency if another source cannot be found.
- If country conditions information is not relevant to the determination of changed circumstances because it would not materially affect the applicant's asylum eligibility, the AO includes in the assessment the statement, "Any change in country conditions would not materially affect the applicant's eligibility for asylum because (the applicant has not established a protected characteristic, is subject to a mandatory bar, etc.)" and an explanation of the reasons for the finding of no protected characteristic, the bar, or other reason country conditions would not materially affect the applicant's asylum eligibility.

g. Preparing the Decision

Asylum office personnel process the approval, referral, and denial of the application of an applicant who established changed circumstances materially affecting his/her eligibility for asylum after a prior denial by EOIR in accordance with regular decision procedures. *See* section II(N), *AO Prepares the Decision*.

Asylum office personnel process a referral or denial based solely on a prior denial by EOIR in accordance with regular decision procedures, except for the PDEC or FDEC decision codes: I6 for out-of-status (FDEC), or D6 for in-status cases (PDEC and FDEC). The referral letter for prior denial cases is Appendix A 55, *Referral-Prior Denial*.

h. HQASM/QA Review

HQASM/QA will review and provide feedback on each case involving a prior denial by EOIR before the decision is issued, regardless of whether the case is approved, referred, or a NOID issued until January 3, 2003. *See* Langlois, Joseph E. INS Asylum Division. *Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 4 January 2002), 14 p. After that period of time, HQASM/QA will continue to review only approvals of such cases.

S. QUALITY ASSURANCE REVIEW

There are two entities involved in quality assurance issues within the asylum program; (1) Headquarters Asylum Quality Assurance Unit (HQASM/QA); (2) the Quality Assurance/Trainer (QA/T) at the local asylum office.

1. HQASM/QA

The nature of certain cases requires the asylum office to notify HQASM/QA before a decision may be issued to an applicant.

a. Quality Assurance Referral Sheet

The *Quality Assurance Referral Sheet* (*Sheet*) lists the types of cases that must be sent to QA. All cases on the *Sheet* require a written response from QA before the asylum office may serve the decision on the applicant. Because QA may periodically change the types of cases it lists on the *Sheet*, the QA/T is responsible for maintaining copies of the current *Sheet*.

Langlois, Joseph E. INS Asylum Division. *Cases Referred to HQASM/QA for Review,* Memorandum to Asylum Office Directors (Washington, DC: 9 April 1998), 3 p.

b. Submission of Quality Assurance Referral Packet to HQASM/QA

The QA/T coordinates all submissions to HQASM/QA and maintains a log to track them in order to follow-up on any cases that may require lengthy review time. If the case involves an in-person service of decision, the asylum office must submit the case a sufficient period of time before the pick-up date so that HQASM/QA can review the materials and respond before the pick-up. The *Sheet* contains a section for a pick-up date that asylum office personnel complete before transmitting the case to HQASM/QA personnel.

To submit a case to HQASM/QA, each asylum office must prepare a "Quality Assurance Referral Packet" that includes:

- Completed *Quality Assurance Referral Sheet*
- Copy of the *Assessment* or *NOID*
- Copy of all I-589s filed by the applicant
- Copy of any supporting documentation (e.g., affidavit, arrest warrant, passport)
  - Do not include copies of generalized country conditions materials; however, if the AO relies on a specific article that is not readily available, a copy should be included in the packet.
- Copy of the interview notes

Local asylum office policy dictates who is responsible for assembling the packet.

Before sending the packet to HQASM/QA, either the QA/T or an SAO removes any decision entered into RAPS by the AO and places the case on HOLD – HQ in RAPS. If the packet is 15 pages or less, the QA/T may send it via facsimile to HQASM/QA at (202) 305-2918. If the packet is more than 15 pages, the QA/T sends the packet via Federal Express to HQASM/QA at 111 Massachusetts Avenue, 3rd floor, ULLICO Bldg., Washington, D.C. 20001.

c. Comments from HQASM/QA

Neither the *QA Referral Sheet* nor any comments from HQASM/QA remain part of the A-file. The QA/T collects and maintains a response and the accompanying *Assessment*/*NOID* (including a rewrite) for the purpose of identifying issues that may need analysis and discussion during weekly asylum office trainings.

2. QA/Trainer at the Local Asylum Office

Each asylum office has at least one (1) QA/T position. This position was created to facilitate local quality assurance, liaise with HQASM/QA, and to conduct trainings. Additional responsibilities may be placed upon a QA/T depending upon the needs of the asylum office as determined by the Director or Deputy Director. See Langlois, Joseph E. INS Asylum Division. *The Role of the Quality Assurance & Training Coordinator,* Memorandum to Asylum Office Directors and QA/Ts (Washington, DC: 17 December 1998), 11 p.

T. RAPS REPORTS

1. Types of Reports

a. Officer Casebook

The Office Casebook is a weekly report that assists SAOs and AOs in monitoring individual AO caseloads. The report shows cases assigned to an AO and their status within the asylum adjudication process. SAOs and AOs must routinely review the Casebook to ensure its accuracy, paying particular attention to Part 1 of the Casebook, which shows cases that have been interviewed and are still pending a decision by the AO. If a case appears on the report for which the AO does not believe s/he is responsible, the AO must investigate the case and discuss it with the supervisory asylum officer (SAO), and report the same to the Security Officer (SO) and Computer Security Officer (CSO).

The RAPS Reports Manual should be consulted for a list of all reports that can be generated.

i. Part I – Cases Pending Initial Write-up

Part I lists the A-numbers of cases that were interviewed by an individual AO, but have no decision entered in RAPS.

ii. Part II – Referrals Pending OSSE

Part II lists the A-numbers of cases that have an FDEC entered, but charging documents has not been served on the applicant and OSSE updated in RAPS.

iii. Part III – PDEC Denials Pending FDEC or DENY

Part III lists the A-numbers of cases with PDECs of D1-D7, but without a final decision entered. When a NOID has been issued, the number of days since the service of the NOID is listed (using the date of DINT in RAPS). Part III also included cases with an FDEC of D1-D7 (final denial), but no denial letter has been served and/or the DENY screen has not been updated.

iv. Part IV – PDEC Grants Pending FDEC or GLET

Part IV lists the A-numbers of:

- cases with PDECs of GR or GC, but without a final decision
- cases with FDECs of G1, but the grant letter has not been served and/or the GLET screen has not been updated.

b. Officer Activity Report

This is a biweekly report that lists all cases interviewed, closed or given a preliminary or final decision by an AO during the reporting period. AOs attach this report to their biweekly *Asylum Officer Accuracy, Productivity and Timeliness Worksheet*, in connection with Part III: Calculating Timeliness.

c. Cases with PDEC "GR" and All FD-258 Ready

This is a weekly report that lists all cases with a PDEC of GR (recommended approval) where the results of the FBI fingerprint check for the P.A. and all dependents are NONIDENT. CFP cases are flagged with an "X." This report allows an asylum office to identify the recommended approvals that are ready for an asylum approval so that the cases may be processed to completion within 30 days of the FBI clearance.

d. Fingerprint IDENT and 2nd Reject

This is a weekly report that lists all cases where the results of the FBI fingerprint check for an applicant is IDENT, or the fingerprints have been rejected twice by FBI as unclassifiable. This report allows an asylum office to identify which cases need follow-up processing in accordance with Section III(L), *Identity and Security Checks*.

e. No-Show Cases Open 15-Days or More

This is a weekly report that lists all cases where at least 15 days have passed since the asylum office marked the case with an "N/S" in the INTERVEW DATE field on the CSTA screen, and are still pending a decision. Asylum office personnel use this report to process "no-show" cases according to the procedures on failure to appear in Section III(J).

f. NAILS Record Check Hit Report

This is a daily report that lists applicants who may be the subject of records in NAILS II. Asylum office personnel perform an on-line query of NAILS II and a file review, if necessary, for each individual on the list to determine if the individual in NAILS II and the individual in RAPS are the same person. Whatever the outcome of the query, asylum office personnel update the results in RAPS using the Records Check Update (RCDS) screen in order to confirm the review of the NAILS II hit flag. Until this step is completed, no decision on the case can be updated in RAPS.

g. DACS Record Check Hit Report

This is a daily report that lists applicants who may be the subject of records in DACS. Asylum office personnel perform an on-line query of DACS and a file review, if necessary, for each individual on the list to determine if the individual in DACS and the individual in RAPS are the same person. Whatever the outcome of the query, asylum office personnel must update the results in RAPS using the Records Check Update (RCDS) screen in order to confirm the review of the DACS hit flag. Until this step is completed, no decision on the case can be updated in RAPS.

h. Name Change Report

RAPS generates a weekly report in each asylum office with the A-numbers of files that were updated using the NCHG command. Asylum Office Directors establish local policy to ensure that all name changes are compared to CIS and when appropriate, CIS is updated by asylum office personnel with special update access to CIS. The "ALIASES" field in CIS should also be updated if appropriate.

2. Security Procedures for Reports

Each asylum office has a Security Officer (SO) and a Computer Security Officer (CSO). Both individuals are responsible for examining the Officer Casebooks for abnormalities and investigating any perceived anomaly, such as an update of a case in RAPS showing the officer ID of an AO no longer employed by the asylum office. See Langlois, Joseph E. INS Asylum Division. *Office Security Procedures*, Memorandum to Asylum Offices (Washington, DC: 16 April 1999), 2p. Every anomaly is to be investigated, with the results of investigations documented by the SO, and periodically reported in writing to the Director.

AOs are responsible for ensuring the accuracy of both their Officer Casebook and their Officer Activity Report. An AO must investigate any case that appears on either report that s/he believes is incorrectly assigned, and must report the same to the SAO, SO and the CSO. SAOs should also review the reports for each AO s/he supervises. Abnormalities are to be reported to the SO and CSO for investigation.

U. REINSTATEMENT OF A PRIOR ORDER

If an applicant returns to the U.S. illegally after having been removed from the U.S., or departed voluntarily while under an order of removal, deportation or exclusion, the individual is subject to a reinstatement of the prior order. This does not include an individual who is granted voluntary departure and leaves the U.S. before expiration of the voluntary departure period. An individual who is subject to a reinstatement of a prior order is not eligible for any relief under the INA, including asylum, but may seek withholding or deferral of removal under Article 3 of the Convention Against Torture.

8 CFR 241.8

Different procedures may apply for *ABC* cases. See the *ABC/NACARA Procedures Manual.*

Whether a prior order will be reinstated is under the purview of the District Director (DD).

1. Determining Whether an Applicant is Subject to Reinstatement of a Prior Order

Often, the asylum office becomes aware that an applicant is subject to reinstatement of a prior order when it receives an IDENT FBI response. An AO may also discover this information at the time of the interview, or shortly thereafter, when the asylum office receives an A-file after an interview has been conducted on a T-file.

When asylum office personnel determine that the applicant is subject to a reinstatement of a prior order, the asylum office must contact the DD having jurisdiction over the applicant's place of residence, to see whether s/he will pursue a reinstatement of the prior order. The processing of the asylum application stops until the asylum office is notified either that the prior order has been reinstated or that the DD will not reinstate the order. For this reason, the asylum office must ensure that it is contacted when the DD reaches a decision.

If the asylum office discovers the applicant is subject to a reinstatement of a prior order at the time of the interview, local procedures dictate whether there is immediate follow-up with the District Office. The AO may serve a *Mail-out Notice* (Appendix A 8) on the applicant if a *Pick-Up Notice* would normally be required. If the applicant has already been served the *Pick-Up Notice*, asylum office personnel send the applicant a *Notice of Change in Decision from Pick-up to Mail-out* (Appendix A 33), if the information is discovered a sufficient period of time before the pick-up date. Otherwise, the IO/CR informs the applicant that his/her decision is not ready for service at the time s/he appears on the pick-up date.

2. District Director (DD) Action

The DD and the asylum office coordinate the transfer of the A-file throughout the reinstatement process. If the DD declines to pursue reinstatement of the prior order, the asylum office continues to process the asylum application.

If the DD decides to pursue reinstatement of a prior order, s/he issues to the applicant a Form I-871, *Notice of Intent/Decision to Reinstate Prior Order*. The applicant is given an opportunity to respond to the written notice before a final determination is made.

8 CFR 241.8

3. Asylum Office Action When a Prior Order is Reinstated

Once the prior order has been reinstated, the applicant is not permitted to apply for asylum or any other benefit under the INA.

The applicant is eligible to apply for withholding or deferral of removal under section 241(b)(3) of the INA and under the *Convention Against Torture*. The fact that an individual applied for asylum does not automatically entitle him/her to a "reasonable fear" interview. Pursuant to the reasonable fear case procedures, a "reasonable fear" interview is conducted only if the applicant is specifically referred to an asylum office by the office that reinstated the order. If the asylum office issued a *Recommended Approval* letter, a reasonable fear interview is automatic.

See 8 CFR 208.31 for procedures on conducting a reasonable fear interview.

Once an INS Officer serves Form I-871 on an applicant, the asylum office administratively closes the asylum application on the CLOS screen in RAPS using close code "CO-Reinstatement" regardless of whether a "reasonable fear" interview will be conducted. If the DD refers an applicant for a reasonable fear interview, an AO interviews the applicant and adjudicates the claim pursuant to reasonable fear procedures. The AO enters data on the case into APSS in accordance with reasonable fear procedures.

a. *Recommended Approval* Letter has not been Issued

When the asylum office receives a copy of Form I-871, asylum office personnel:

- Administratively close the case in RAPS. The reason for the closure is "Reinstatement" (CO). Indicate that an NTA/referral will **NOT** be issued to the applicant (Place "N" in the "Send to IJ" field).

b. *Recommended Approval* Letter has been Issued

When the asylum office receives a copy of Form I-871, asylum office personnel:

- Administratively close the case in RAPS. The reason for the closure is "Reinstatement" (CO). Indicate that an NTA/referral will **NOT** be issued to the applicant. (Place "N" in the "Send to IJ" field).
- Prepare a *Cancellation of Recommended Approval (Reinstatement of a Prior Order)* (Appendix A 31).
- Serve the letter by either regular or certified mail, depending upon local asylum office policy.

The SAO coordinates with the district office in order to arrange for the service of an M-488, *Information about Reasonable Fear Interview*, and schedule a "reasonable fear" interview.

V. RESCHEDULE REQUESTS

All requests to reschedule must be made by the applicant in writing by either sending a letter to the asylum office or completing a *Case Reschedule History* (Appendix A 5) at the asylum office. Asylum office staff may not honor a request to reschedule received telephonically. If a telephonic request is received, asylum office personnel notify the caller of the requirement to make the request in writing by mail, fax or in person, that the request must include the reason for the request and any associated evidence, and that the written request must be received less than 15 days after the interview date.

1. Requests to Reschedule Interview

As a matter of Asylum Division policy, the asylum office reschedules an interview if it is the applicant's **first** request for a rescheduling, and the request is received prior to the interview date.

If a request to reschedule an interview is made on or after the interview date, or if the interview has already been rescheduled on one (1) occasion, the applicant must establish that the request for a rescheduling is due to "good cause."

a. Evaluating a Reschedule Request

"Good cause" may be defined as a "reasonable excuse for being unable to appear for an asylum interview." What may be a reasonable excuse for one applicant may not be reasonable when looking at the circumstances of another applicant. Therefore, it is extremely important to review the excuses and requests for a rescheduling on a case-by-case basis before determining whether the request to reschedule will be honored.

This "good cause" standard does not apply if the rescheduling was done due to a procedural fault by the asylum office. See Section III(J) on failure to appear for an interview.

An asylum office must reschedule an asylum interview if the applicant presents exceptional circumstances for his/her failure to appear, regardless of how many times the applicant may have previously requested a rescheduling of an interview.

If the asylum office honors the request to reschedule, asylum office personnel update the Remove Case from Schedule (REMC) command, indicating the rescheduling is at the request of the applicant. RAPS will schedule a new interview and generate an *Interview Notice* according to the automatic scheduling priorities. The clock will stop until the applicant appears for the next interview.

b. Abuse of Rescheduling Policy

Local asylum office policy dictates how each office will handle multiple requests for rescheduling, when it appears that the requester is either causing undue delay of the interview, or is abusing the office's rescheduling policy. If asylum office personnel determine that INS will not honor a future excuse and request for a rescheduling of the asylum interview, the asylum office may use the sample *Rescheduling of an Asylum Interview* letter (Appendix A 32).

In addition, the *Case Reschedule History* (Appendix A 5) form contains a line at the bottom of the page where an asylum office can record how many times the case has been rescheduled. Each asylum office may determine whether to use this section of the form or delete it.

2. Applicant Requests to Reschedule Pick-up Date

If an applicant informs an AO that s/he cannot appear on the date and time indicated on the *Pick-up Notice*, the AO informs the applicant of the consequences of his/her failure to appear (i.e., if the applicant is to be referred, the clock will stop until the applicant appears before the IJ). If the applicant has special circumstances, s/he may, be given a pick-up date that is not within the usual timeframe of decision service if the following criteria are met:

- The applicant presents a reasonable excuse why s/he is unable to appear on the date and time given to other applicants interviewed that day.
- The SAO concurs in the decision to give the applicant a special pick-up date.

If the AO gives the applicant a special pick-up date, it must be *prior* to the regularly scheduled pick-up date, or a date that will ensure that the asylum office complies with its "60-day referral clock." Unless exceptional circumstances are established, the asylum office will not honor a request to reschedule a pick-up date after one has been issued.

If asylum office personnel entered the pick-up date in RAPS prior to the interview and that date was changed by the AO and SAO at the time of the interview, the date previously-entered into RAPS will need to be removed and a new date entered using the Pick-Up Scheduling (PUSH) command.

3. Canceling a Pick-up Date at the Fault of INS

Once the asylum office issues a *Pick-up Notice*, asylum office personnel must serve the decision on the appointed date and time. An asylum office cannot cancel a pick-up date unless extraordinary circumstances are present. An SAO determines the circumstances on a case-by-case basis.

If the asylum office must cancel a pick-up date, the applicant must be notified in advance, if possible. If there is sufficient time before the applicant is scheduled to appear at the asylum office, asylum office personnel send the applicant a *Notice of Change in Decision from Pick-up to Mail-out* (Appendix A 33). A copy of the Notice remains in the applicant's file.

W. RESCISSION OF AN ASYLUM APPROVAL

There may be instances when an asylum office learns that an applicant was either under the jurisdiction of EOIR or outside of the U.S. at the time of the asylum approval. However, lack of jurisdiction over an asylum application is not grounds for termination under 8 CFR 208.24. When the asylum office did not have jurisdiction to hear the claim, the asylum office must move to reconsider the asylum approval pursuant to 8 CFR 103.5(a)(5)(ii) in order to pursue rescission of asylum status.

Langlois, Joseph E. INS Asylum Division. *Rescission of Asylum Based on Lack of Jurisdiction*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 9 February 2001), 3 p.

1. Issue Motion to Reconsider

If the asylum office did not have jurisdiction over the asylum application at the time of approval, the asylum office sends the asylee a *Motion to Reconsider* (Appendices A 34 or A 35) letter, pursuant to 8 CFR 103.5(a)(5)(ii). Use the letter that corresponds to the reason for rescission, which is either that the applicant was in proceedings before EOIR or was outside of the U.S. at the time of the final approval. If the applicant was under the jurisdiction of EOIR with another A-number, consolidate the A-files and the A-numbers. Attach to the Motion to Reconsider any unclassified documents that were relied upon to determine that the INS did not have jurisdiction over the asylum application at the time of the final approval.

If the asylum officer did not have jurisdiction over a derivative application, but did have jurisdiction over the principal's application, the letter should be directed to the dependent with a copy sent to the principal applicant. The clause at the end of the first paragraph, "as well as the grant of asylum to any dependent included in your asylum application," should be deleted.

2. Wait 45 days or until response is received, whichever comes first

The asylee is given 45 days from the date of the motion (30 days + 15 days for receiving and reviewing the mail) to respond to the Motion to Reconsider.

3. Review response, if any, and issue letter affirming or rescinding grant

If the asylee submits a timely response to the motion, and it rebuts the reasons provided for the proposed rescission, asylum office personnel send the asylee a letter affirming the asylum grant.

If the asylum office does not receive a timely response or the response fails to overcome the reasons to rescind, asylum office personnel take the actions described below to rescind the asylum grant.

If there are derivative asylees who obtained asylee status through an I-730, their status must also be rescinded. They may be added to the applicant's case in RAPS prior to these actions using the I730 command.

a. Rescission based on EOIR jurisdiction

- Send the former asylee notification that the grant of asylum has been rescinded. If the asylee received asylum as a derivative, remove the sentence "the grant of asylum to any dependent included in your asylum application is also rescinded" from the rescission notice.
- Using the CORR screen, remove the Grant Letter Sent (GLET) date and the Final Decision (FDEC) in RAPS.
- Administratively close the asylum application in RAPS. The reason for the closure is C4, "IJ JURISDICTION," Indicate that an NTA/referral will **NOT** be issued to the applicant (Place an "N" in the "Send to IJ" section).
- Transfer the file to District Counsel if the former asylee is currently in proceedings or to District Investigations or Deportation (depending upon local procedures) if the former asylee has a final order.

b. Rescission based on applicant's lack of physical presence in U.S.

If it is determined that the applicant was not in the United States at the time of the asylum approval, INS lacked jurisdiction to approve asylum and the prior grant of asylum must be rescinded. However, the actions to take after rescission will depend on whether the applicant received advance parole or not, whether the applicant traveled back to the country of feared persecution, and whether the absence from the United States affects the applicant's substantive claim. There may be some circumstances in which the applicant will be required to file a new I-589, but in other cases, it may be appropriate to grant the I-589 again, with a new approval date. Until final guidance is provided on these rare cases, please contact the HQASM Operations team for guidance if you intend to rescind a grant of asylum based on an applicant's absence from the U.S. at the time of approval. HQASM Operations will provide instruction for the language to incorporate in the rescission letter based on the particular circumstances of the case, as well as further actions to take on the applicant's case.

c. Rescission grounds apply only to dependent

If the rescission grounds apply only to a dependent, only the asylee status of the dependent is rescinded. HQASM is currently requesting changes to RAPS to accommodate such a case. Until RAPS is modified, when the asylee status of only the dependent is being rescinded, asylum office personnel:

- Prepare a brief memorandum to the P.A.'s file explaining that the dependent was

removed from the P.A.'s case for rescission of asylee status, indicating the reason.

- Print the CSTA and CHIS screens and place in the dependent's file.
- Use the Create New Case for Dependent (NEWC) command to create a record of the dependent as a P.A. in RAPS.
- Add the decision data from the former case.
- Update RAPS to reflect that asylee status has been rescinded and process the case as indicated above.

X. TERMINATION OF AN ASYLUM APPROVAL

1. Overview of Termination Proceedings

a. Grounds for Termination of Asylum Status

The asylum office initiates a proceeding to terminate asylum status granted by INS when evidence indicates that at least one (1) of the following circumstances is present:

INA § 208(c)(2), (3); 8 CFR 208.24

- There is a showing of fraud in the alien's application such that s/he was not eligible for asylum at the time it was granted.
- As to an application filed on or after April 1, 1997, one or more of the conditions described in section 208(c)(2) of the INA exist, summarized below:
  - the alien no longer meets the definition of a refugee due to a fundamental change in circumstances;
  - the alien is a persecutor, danger to the security of the U.S., inadmissible under terrorist grounds, or firmly resettled in another country; or the alien was convicted of a particularly serious crime or there are serious reasons to believe the alien committed a serious nonpolitical crime outside the U.S.;
  - the alien may be removed pursuant to a safe third country agreement;
  - the alien voluntarily re-availed him- or herself of the protection of the country of feared persecution by returning to such country with the reasonable possibility of obtaining or having obtained permanent resident status with the same rights and obligations of other permanent residents of the country;
  - the alien has acquired a new nationality and enjoys the protection of that country.
- As to an application filed before April 1, 1997, the alien no longer has a well-founded fear of persecution due to a change of country conditions in the alien's country of nationality or last habitual residence, or the alien has committed any act that would have been grounds for a mandatory denial of asylum under 8 CFR 208.13(c)(2), summarized below:
  - the alien was convicted of a particularly serious crime;
  - the alien was firmly resettled in another country;
  - the alien is a danger to national security;
  - the alien has been convicted of an aggravated felony;
  - the alien order, incited, assisted, or otherwise participated in persecution of others on account of one or more of the five protected grounds;
  - the alien is involved in terrorist activities as described in INA § 212(a)(3)(B)(i)(I) [engaged in], (II) [reasonably likely to engage in after entry], and (III) [incited with an intent to cause death or serious bodily harm], unless there are no reasonable ground to believe the asylee is a danger to national security.

Termination of asylum status for the principal applicant results in termination of any derivative status, whether derivative status was gained at the same time of the original asylum grant or through the approval of an I-730, *Refugee/Asylee Relative Petition*. The termination does not preclude the former derivative from applying for asylum or withholding of removal on his or her own. When grounds for termination apply to a derivative alone, the derivative asylum status is terminated without effect on the principal asylee's status, and documents discussed in this section are issued to the derivative asylee alone.

b. Standards of Proof Relevant to Termination Proceedings

Before asylum may be terminated, the asylum office issues to the asylee a *Notice of Intent to Terminate (NOIT)* listing the ground(s) for the intended termination and containing a summary of the evidence supporting the ground(s). To issue a *NOIT,* the asylum office must have information establishing a *prima facie* case supporting termination. In order to terminate asylee status, the INS has the burden of establishing one or more of the termination grounds in 8 CFR 208.24 by a *preponderance of the evidence*. In other words, to begin termination proceedings through the issuance of a *NOIT*, the asylum office must have information that, on its face, indicates that asylum termination *may* be appropriate, but need not have the higher level of evidence required to terminate asylee status.

After the issuance of the *NOIT*, the disclosure of other facts and circumstances in the termination interview may cause the asylum office to find that there is insufficient evidence to meet the preponderance of the evidence standard required to terminate asylee status. For more discussion regarding standards of proof, see the AOBTC Lesson Plan, *Asylum Eligibility Part IV: Burden of Proof, Standards of Proof, and Evidence*.

If the asylum office possesses information that does not rise to the level of a *prima facie* case in support of termination but that raises questions about the viability of the asylee's status, the asylum office may request a *voluntary* interview with the asylee. If the asylee does not cooperate, the asylum office may coordinate with Investigations or (as in the case of overseas information or where otherwise appropriate) with HQASM to develop the information further.

c. Asylum Office Jurisdiction and Choice of Procedure for Terminating Asylum Granted by INS

Termination proceedings can only be initiated after an *Asylum Approval* has been issued, and may be initiated even if the individual has adjusted his/her status to that of a lawful permanent resident (LPR). The asylum office does not have jurisdiction to terminate asylum granted by EOIR. If the asylum office receives a request to take action to terminate asylum that was granted by EOIR, the asylum office refers the requester to the Office of District Counsel.

When the Service initiates termination proceedings, it may do so by initiating and conducting termination proceedings at the asylum office pursuant to guidance in this Manual or the Service may elect to issue an NTA concurrently with a *Notice of Intent to Terminate* to vest the Immigration Court with jurisdiction over the termination proceedings. See 8 CFR § 208.24(f).

The asylum office that handles issues related to the termination of asylum status, including conducting termination proceedings, if any, is the asylum office with jurisdiction over the asylee's place of residence (or, if detained, place of detention).

HQASM is currently working to update RAPS to facilitate processing in a jurisdiction other than that where the approval was issued.

2. Sources of Adverse Information

a. Overseas Source

An asylum office should not take action on adverse information received directly from an overseas DOS consular or overseas INS immigration officer before submitting it to HQASM for review. INS and DOS have established a protocol which requires that any adverse information supplied by a DOS consular officer be reviewed first by DRL/CRA in Washington, D.C. and again by Headquarters Asylum (HQASM). Where the information is supplied by an overseas INS officer, only HQASM need review the adverse information. Asylum office personnel refer to HQASM any inquiries or information received by the asylum office directly from an overseas source. The asylum office should not take further action before receiving written instructions from HQASM.

i. HQASM receipt of adverse information

When HQASM receives adverse information from either the DOS or an overseas INS office, HQASM personnel:

- Receive and date stamp the cable or correspondence containing the adverse information.
- Create a W-File that contains a copy of the adverse information. The Work Folder remains at HQASM.
- Make appropriate entries into the Overseas Asylum Fraud Interdiction Log ("Log") and request transfer of the individual's A-file to HQASM.

If HQASM requests the A-file, upon its receipt, HQASM personnel photocopy the original Form I-589, interview notes, and other relevant information, and place copies in the Work Folder. HQASM also confirms receipt of the file by updating CIS and the Log.

ii. Transmittal of adverse information to the asylum office

If HQASM determines that the adverse information warrants a termination interview, the HQASM Director prepares a memorandum to the asylum office Director who has jurisdiction over the individual's place of residence.

The memo to an asylum office Director *does not* recommend that asylum status be terminated. The transmittal memo provides a brief outline of the information and merely concludes that there is sufficient adverse information to conduct a termination interview, where all the facts of the case can be more fully developed and evaluated by an AO.

HQASM attaches the memo to the A-file for shipment to the appropriate asylum office Director for further action. HQASM must review the *NOIT* and the memorandum recommending either termination or continuation of asylum status before it may be served on the applicant and any representative of record.

b. Domestic Source – Applicant in the U.S.

An asylum office may receive from within INS or another domestic source outside INS adverse information that indicates the asylum status of an applicant should be terminated. The asylum office Director, or designee, should review any adverse information received and institute termination proceedings when it establishes a *prima facie* case in support of termination based on one or more of the grounds provided in 8 CFR 208.24.

Unless HQASM received the information and therefore brought it to the attention of the asylum office, HQASM need not act as an intermediary between the asylum office and the entity providing the information. HQASM also does not need to review the NOIT or a recommendation to terminate or continue the applicant's asylum status, unless otherwise required by HQASM/QA review guidelines, when requested in a particular case, or if the case involves classified information, as discussed below.

See Section III(X)(3)(b) on classified information.

c. Domestic Source – Applicant Applying for Admission at a Port of Entry

An asylum office may receive a request from another INS component to issue a NOIT to an asylee who is seeking re-admission to the U.S. The asylum office may only issue the NOIT if there is evidence establishing a *prima facie* case in support of termination.

8 CFR 208.24(g)

3. Notifying Applicant of INS's Intent to Terminate Asylum Status

Prior to the termination of a grant of asylum, the asylum office notifies the individual of INS's intent to terminate asylum status through the issuance of a *Notice of Intent to Terminate* (*NOIT*). The NOIT template used depends on whether the termination proceedings will be conducted by the asylum office or EOIR. Circumstances under which an INS asylum grant may be terminated by EOIR are discussed below. In either case, the NOIT notifies the applicant of the grounds for termination, and includes a summary of the unclassified supporting evidence that constitutes grounds for termination.

Required Materials: Appendices: *Notice of Intent to Terminate Asylum Status by INS* (A 39), *Notice of Intent to Terminate Asylum Status by EOIR* (Appendix A 42)

Generally, the asylum office may disclose to the applicant unclassified evidence constituting or supporting grounds for termination, including unclassified materials from the Department of State or other government agencies. If there is a question as to what may be disclosed to the applicant in notifying him/her of the grounds for termination, HQASM should be contacted.

The asylum office may not disclose information about third parties in the *NOIT*. If the material from another agency contains information about a third person, the asylum officer should summarize the document, omitting the information about that individual and redact those portions of the document, if it is attached to the *NOIT*.

Asylum office personnel attach a Legal Provider List to the NOIT when sending it to the individual. If the termination proceedings are conducted by the asylum office, the termination interview is set for at least 30 days after the date of mailing of the *NOIT*. The applicant may waive this 30-day period and request an earlier interview, or may waive the interview entirely and admit the allegations in the *NOIT*, in writing. A written waiver form is included as an attachment to the *NOIT* for this purpose.

Because a significant amount of time may have passed since the asylum approval, asylum office personnel review the A-file, RAPS, CLAIMS, and other available INS systems for the most current address for the *NOIT*.

a. Termination by EOIR When the Asylum Office Issued the *Asylum Approval*

Generally, an asylum office terminates asylum status when the asylum approval was issued by an asylum office. An immigration judge may also terminate asylum status at any time after an asylum office has issued a NOIT to an applicant.

8 CFR 208.24(f)

The majority of the asylum applicants whose asylum status is reviewed by an immigration judge are those individuals who will be or have already been placed into proceedings by another branch of INS or are being detained based on a criminal conviction. The asylum office Director may elect to send an AO to a facility to conduct a termination interview and complete the adjudication, or can choose to have the applicant's asylum status reviewed by the IJ in the context of a removal or deportation proceeding. However, there may be other circumstances where the Director feels it is appropriate to issue an NTA concurrently with the NOIT to vest jurisdiction over the termination proceedings with the Immigration Court.

If the Director determines that an IJ will review the applicant's asylum status, the following occurs:

- The asylum office obtains a copy of the court disposition, indicating the criminal record of the applicant, and a copy of the NTA (charging document), if any.
- Asylum office personnel prepare a *Notice of Intent to Terminate Asylum Status by EOIR* (Appendix A 42), which indicates the IJ's role in reviewing the individual's asylum status.
- Asylum office personnel serve the NOIT and a Legal Provider List on the applicant either by certified mail or in-person by an Investigator. If in-person service is accomplished, the asylum office must obtain a copy of the *NOIT* signed by the applicant in order to verify receipt.
- If an NTA has not been issued, asylum office personnel consult with the District Counsel's office to prepare and issue an NTA with the appropriate charge(s). Whether the asylum office or another INS component places the asylee in proceedings, asylum office personnel update the HEAR screen in RAPS with the IJ hearing information.

Asylum office personnel request that the District Counsel and any other INS component involved in the case notify the asylum office if asylum is terminated. The asylum office may not update the Revocation (REVO) screen to show that an individual is no longer an asylee unless the immigration judge terminates asylum status.

b. Classified Information

In some cases, the adverse information from either an overseas or domestic source that constitutes grounds for termination will include confidential terrorist or criminal information supplied by the Department of State or other sources. An AO must not disclose the details of the confidential or classified information to the asylee, either in the NOIT or later at the termination interview, in order to protect the security of the classified operation or the safety of the confidential informant. The AO who conducts the interview and reviews the information must have the proper security clearance according to the level of the classified information.

If the information is from an overseas source, the transmittal memorandum from HQ to the Asylum Office will suggest the appropriate disclosure of classified or sensitive information, as needed, including suggested language to be included in the NOIT to balance security concerns with the need to provide an applicant with a meaningful opportunity to rebut. HQASM will also be available to discuss the issue with the interviewing AO. If the information is from a domestic source, the asylum office Director will liaise with HQASM to inform the AO what information may be disclosed, and to what degree of detail.

An AO may <u>not</u> at any time disclose the identity of a confidential informant (or information that could reasonably lead to discovery of the identity of the informant), or the nature of an undercover or otherwise classified (e.g., terrorist or security) operation without the prior **written** concurrence of HQASM**.**

4. Conducting the Termination Interview

The AO places the individual, dependent family members, and the interpreter, if any, under oath. The AO, applicant, and interpreter, if any, complete a *Record of Applicant and Interpreter Oaths* (Appendix A 1).

If a dependent entered the U.S. pursuant to an I-730 that was granted based upon the P.A.'s asylum approval, the AO updates the I-730 Data Entry (I730) screen in RAPS. This adds the dependent to the P.A.'s asylum claim.

The nature of the termination interview is nonadversarial, and the conduct of the interview is consistent with the procedural aspects of an asylum interview as outlined in Section II(J) of this Manual, *AO Conducts an Asylum Interview*, except that the termination interview need only explore issues relevant to termination of asylum. If the individual fails to appear for the termination interview, the asylum office waits fifteen (15) calendar from the date of the interview before taking further action to see if the individual submits an excuse for his/her failure to appear or a request to reschedule the interview.

5. Making a Determination

INS has the burden of establishing that a preponderance of the evidence supports termination. For guidance on the preponderance of the evidence standard, see the AOTBC Basic Training Materials, *Asylum Eligibility IV: Burden of Proof and Evidence*.

If the reason for termination is based upon fraud, an AO may not affirm the grant of asylum based on a new "true" story offered by the alien for the first time at the termination interview. In most cases the Asylum Officer will not have a new I-589 reflecting the new "true" story, nor will the DOS or overseas information supplier have had the opportunity to review and comment on the new claim. More importantly, after having committed fraud in the affirmative system, the appropriate forum for the individual to present a new asylum claim is in defensive proceedings where adversarial methods such as cross-examination can further test the veracity of the new story.

a. Applicant Appeared for the Interview

If the individual appears for the interview, the AO makes a recommendation either to terminate or to continue the individual's asylum status based upon evidence presented. The asylum officer prepares a memorandum for the file recommending either termination or continuation of asylum status, depending upon whether a preponderance of the evidence supports termination. The memo includes a summary of the applicant's testimony, the original claim, and the adverse information leading to termination, and an analysis of why asylum status should be terminated or should be continued. .

b. Applicant Failed to Appear for the Interview

If the individual fails to appear for the interview and the failure to appear is not excused in accordance with 8 CFR 208.10, the AO follows the same procedures as discussed in section (a) above, except that the recommendation memo also includes a brief statement of the circumstances surrounding the failure to appear, whether any excuse was submitted and, if so, why the excuse was insufficient. If the evidence constitutes less than a preponderance of the evidence and therefore appears insufficient to terminate asylum, the asylum office Director may elect to coordinate with the Office of District Counsel and District Investigations to follow up on the case and possibly issue an NTA, when there are sustainable charges.

c. HQASM Review

When HQASM review is required due to HQQA guidelines or as discussed in section (2), above, the asylum office must send to HQASM the following documents for review before preparing the case further:

- QA Referral Sheet

- NOIT
- I-589 with supporting documentation
- Original assessment to grant
- Interview Notes from original asylum interview and termination interview, if any
- Memo to the file recommending termination or continuation of asylum status
- Evidence presented by the individual at the time of the termination interview, if any

If the packet of materials is 15 pages or less, the asylum office may send it via facsimile to the attention of HQASM at (202) 305-2918. If the packet is more than 15 pages, it must be sent to HQASM via Federal Express at HQ/IAO-Asylum Division, 111 Massachusetts Avenue, 3rd floor, ULLICO Bldg., Washington, D.C. 20001.

Once HQASM concurs in the decision, or if the asylum office does not need to obtain concurrence, asylum office personnel prepare the case either for termination or continuation of asylum status.

d. Asylum Office Terminates Asylum Status

The AO prepares:

- Notice of Termination of Asylum Status (Appendix A 40)
- Form I-213, if required.
- NTA

Termination of asylum status applies to the principal as well as all individuals who obtained derivative asylum status from the principal, whether granted as dependents on the I-589 or through an I-730 *Refugee/Asylee Relative Petition*. 8 CFR 208.24(d), 208.21(g).

Regardless of whether the applicant is a Lawful Permanent Resident (LPR) or an asylee, after asylum status is terminated, the asylum office must place the individual before the Immigration Court. Asylum office personnel place a charge and allegation on the NTA that corresponds to the reason for termination (e.g., commission of fraud, criminal conviction, etc.). Asylum office personnel should consult the INS manual that lists all allegations and charges that INS uses for NTAs, and local District Counsel for appropriate charges to list on the NTA.

If the termination grounds apply only to a dependent, only the asylee status of the dependent is terminated. HQASM is currently requesting changes to RAPS to accommodate appropriate updates in such a case. Until RAPS is modified, when the asylee status of only the dependent is being terminated, asylum office personnel:

- Print the CSTA and CHIS screens and place in the dependent's file.
- Use the Create New Case for Dependent (NEWC) command to create a record of the dependent as a P.A. in RAPS.
- Add any missing decision data from the former case.
- Update the REVO screen.
- Follow other applicable procedures in this section.

If the derivative asylee status of an individual who was admitted pursuant to an I-730 is terminated, the NTA is prepared with the appropriate deportability charges under INA § 237, most likely 237(a)(1)(B) [present in the U.S. in violation of law], with any additional charges.

If the applicant was paroled on or after April 1, 1997, not pursuant to advance parole, asylum office personnel must follow the procedures outlined in Section III(Q) when preparing to initiate removal proceedings. The termination of an applicant's status, in and of itself, does not negate the possibility that the applicant has a credible fear of persecution or torture.

If the asylum office that terminated the individual's asylum status is not the same asylum office that conferred asylum status upon the individual, the asylum office that has terminated asylum status must contact the other asylum office to update the Revocation (REVO) screen. HQASM is working on modifications to RAPS to allow updates by the office having jurisdiction over the current address when there has been a change in jurisdiction after the FDEC.

If HQ review is required, asylum office personnel send a copy of the *Termination Notice* via facsimile to the attention of HQASM at (202) 305-2918.

e. Asylum Office Continues the Individual's Asylum Status

The AO prepares:

- Notice of Continuation of Asylum Status (Appendix A 41)

Because the asylum office is not terminating asylum status, no RAPS updates are required. The Case Status (CSTA) screen should continue to reflect that the individual was granted asylum.

Asylum office personnel serve the letter by either regular or certified mail, as dictated by local asylum office policy and place a copy in the applicant's file. If HQ review is required, asylum office personnel also send a copy of the *Notice of Continuation of Asylum Status* via facsimile to the attention of HQASM at (202) 305-2918.

6. FOIA Requests During Termination Proceedings

After the issuance of a NOIT, an applicant or his/her representative may file a request for information in the applicant's file pursuant to the Freedom of Information Act (FOIA). Termination proceedings are to be delayed until the applicant has been provided a response to his or her request, and the file is returned to the asylum office.

Y. WITHDRAWAL REQUESTS

An applicant may withdraw an affirmative asylum application at any time prior to the issuance of a decision. Asylum applicants are not required to withdraw their asylum applications in order to apply for or receive other immigration benefits. The decision to withdraw is the applicant's alone. The asylum office does not have authority to permit or deny an applicant the right to withdraw.

8 CFR 103.2(b)(6)

Procedurally, an applicant may choose to withdraw:

"Decision" refers to the issuance and service of the applicant of an Asylum Approval, Final Denial or Referral.

- Prior to the interview (by mail or in-person),
- On the day of the interview (in front of an IO/CR or AO), or
- After the interview has been conducted, but before the decision has been served on the applicant.

Whatever the case, the asylum office must have written evidence of the applicant's intent to withdraw.

1. Documenting the Applicant's Intent to Withdraw

If the applicant or his/her representative of record sends a written withdrawal request to the asylum office, asylum office personnel take the action requested in the written notice.

If the applicant appears at the asylum office to withdraw his/her request, asylum office personnel give the applicant an *Declaration of Intent to Withdraw Asylum Application* (Appendix A 43) to complete.

2. Closing the Case in RAPS

If the applicant is maintaining valid immigrant, nonimmigrant, or temporary protected status, or parole is not terminated or expired, asylum office personnel:

- Administratively close the case in RAPS. The reason for the closure is "withdrawal" (C3). Indicate that an NTA/referral will **NOT** be issued to the applicant (Place "N" in "Send to IJ" section).

RAPS generates an *Administrative Termination Mailer*, which asylum office personnel mail to the applicant. Local asylum office policy dictates whether the asylum office keeps the file or sends it to the NRC.

If the applicant is deportable or removable, the asylum office determines whether to initiate removal proceedings. Factors to consider include, but are not limited to: whether the file contains sufficient information to establish the applicant's alienage and deportability/inadmissibility, or whether the applicant may be eligible for an adjustment of his/her status in the near future. If charging documents will not be issued, update RAPS as indicated above.

See Section III(Q) on the documentation requirements for parolees.

If charging documents are to be issued, asylum office personnel:

- Administratively close the case in RAPS. The reason for the closure is "withdrawal" (C3). Indicate that an NTA/referral **will** be issued to the applicant (Place a "Y" in the "Send to IJ" section).
- Prepare NTA or I-863, as appropriate.
- Update OSSE upon service of the NTA or I-863.

Z. DISMISSAL OF ASYLUM APPLICATION OF LAWFUL PERMANENT RESIDENT

According to statistical analysis, many A-numbers in RAPS appear in CIS as belonging to individuals who are lawful permanent resident aliens (LPRs), and who are not ABC applicants. On May 21, 1999, the Service published an interim rule in the *Federal Register* to amend 8 CFR section 208.14 by adding the following provision:

Langlois, Joseph E. INS Asylum Division. *Asylum Applicants who have Adjusted to Lawful Permanent Resident Alien (LPR) Status*, Memorandum to Asylum Office Directors (Washington, DC: 18 January 2000), 4 p.

> (f) If an asylum applicant is granted adjustment of status to lawful permanent resident, the Service may provide written notice to the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice, unless the applicant submits a written request within 30 days of the notice, that the asylum application be adjudicated. If an applicant does not respond within 30 days of the date the written notice was sent or served, the Service may presume the asylum application abandoned and dismiss it without prejudice.

1. RAPS Report

Upon initiation by HQASM, each asylum office will periodically receive a report that lists all A-numbers within its control according to the Case Control Office (CCO) section of the Case Status (CSTA) screen, and which appear in CIS as belonging to an LPR. The asylum office will use this report to prepare a notice to each applicant. If a case is marked with a special group code in RAPS, that code will appear on the same line as the A-number.

2. Applicability to Special Groups

These procedures do not pertain to any case that is marked with a special group code of "ABC" or "ABR." They do cover all other special group codes, which include:

- FSB
- HDD
- HGT
- HGX
- ME1, ME2, ME3 and ME4 (unless the individual is also an ABC applicant)
- NCG
- TPS

The processing of an asylum application of an individual who is eligible for benefits under the ABC settlement agreement is governed by the 1990 asylum regulations and settlement agreement, which do not contain a similar provision allowing the Service to presume an abandonment of an asylum application. The interim rule at 8 CFR 208.14 applies only to LPRs who are not eligible for *ABC* benefits, such as individuals who adjusted their status under section 202 of NACARA.

3. Notice

The *Lawful Permanent Resident Notice* (Appendix A 67) informs a non-ABC applicant, who appears in CIS as an LPR, that the Service will presume an abandonment of the asylum application unless the applicant returns the signed and dated notice to the asylum office within 30 days of the date of the notice. To prepare a notice for service on an applicant and representative of record, if any, asylum office personnel compare the applicant's information in RAPS to the applicant's information in CIS (i.e., date of birth, name). If asylum office personnel have any doubts about whether an individual listed in RAPS is the same individual in CIS, the asylum office should **not** issue a notice to the applicant, and immediately schedule him/her for an asylum interview. If the applicant appears for the interview, an Asylum Officer can question the applicant about whether s/he is the same individual who is listed in CIS under the same A-number. If the applicant fails to appear for the interview, asylum office personnel process the case according to local procedures on "no-show" cases.

If asylum office personnel do not have any doubts that the individual in RAPS is the same individual in CIS, follow these steps:

- Pull the A-file of the principal applicant (P.A.) and any dependent from the file room. If the A-file is not within the asylum office, create a T-file for the P.A. and each dependent, and enter them into RAFACS. It is not necessary to order an A-file from another office if it is not within the asylum office.
- If the office does not have the A-file, find the P.A.'s most recent address by checking

both RAPS and CLAIMS 3.

- If the office has the A-file, also check any documents in the file along with the systems checks to find the most recent address.
- If the most recent address is in CLAIMS 3, print the screen that contains the most recent address. If necessary, update RAPS by using the MOVE screen.
- Print the MOVE screen, and place the printout in the P.A.'s file. It is not necessary to place a copy in the dependent's file.
- If the A-file is available, check the file for the Form G-28, *Notice of Entry or Appearance as Attorney or Representative*. If a T-file was created, check the ATTORNEY field of the CSTA screen to see if the P.A. is represented. If the ATTORNEY field indicates an ID code, write down the code.
- Go to the Attorney Maintenance System (PAMS) command
- Type in VWAT on the command line and the ID code from the ATTORNEY field. Press ENTER.
- Print the VWAT screen.
- Prepare a notice to the P.A., listing all dependent A-numbers.
- Date stamp the notice on the date it is mailed. If the applicant is represented, send a copy of the notice to the representative that is listed on the Form G-28, if the A-file is available, or that is indicated on the printout from the VWAT screen in PAMS, if a T-file was created.
- Place a copy of the notice in the file of the P.A. and each dependent.
- Store the file(s) in the asylum office for follow-up action.

4. Follow-up after *Notice*

An applicant has 30 calendar days from the date stamp on the notice to notify the asylum office that s/he wishes to pursue an asylum application. To account for mailing delays, the asylum office does not take any action to dismiss an application until 45 days after the notice was mailed.

a. Applicant Returns the *Notice*

If an applicant returns the notice before the asylum office dismisses the asylum application, asylum office personnel order the A-file of the P.A. and the dependents (if the files are not already located within the asylum office), and schedule the P.A. for an interview using the Add Case to Calendar (ADDC) command in RAPS.

b. *Notice* is Undeliverable

If the post office returns the notice because it is undeliverable, asylum office personnel update the Case Closure (CLOS) screen, indicating that the reason for the closure is a bad address (C1). The asylum office will **not** refer the application to the immigration court (Place an "N" in the "Send to IJ?" section) because RAPS does not contain a valid address.

c. Applicant Fails to Return the *Notice*

If an applicant fails to return the notice within this timeframe, asylum office personnel update the Admin Close Case (CLOSE) screen, indicating that the reason for the closure is an LPR dismissal (DISMISS-WITHDR.LPR - "CR"), and place an "N" in the "Refer to IJ?" section. RAPS automatically generates an *Administrative Closure* mailer.

IV. "HOW TO …"

A. WRITE AN ASSESSMENT OR NOID

For all *Assessments* and a *NOID*, see the AOBTC Basic Training Materials:

See Appendices A 44 – A 46

- Decision Writing Part I: Overview and Components, Focusing on the First Three Components
- Decision Writing Part II: Legal Analysis
- Credibility
- Making an Asylum Decision
- Country Conditions Research and the Resource Information Center (RIC)

B. PREPARE A DECISION LETTER

The types of decision letters are:

- Recommended Approval (Appendices A 47 – A 48)
- Conditional Grant Letter (Appendix A 11)
- Asylum Approval (Appendices A 16, A 49 and A 50)
- Referral Notice (Appendices A 51 – A 55)
- Final Denial (Appendices A 56 – A 58)
- Cancellation of Recommended Approval (Appendices A 22 – A 24 and A 29 – A 31)
- Notice of Termination of Asylum Status (Appendix A 40)
- Notice of Rescission of Asylum Grant (Appendix A 36)

To prepare a decision letter, asylum office personnel generate one (1) decision letter per family that lists the A-number of the P.A. and each dependent. The file of the P.A. and each dependent contains a copy of the letter, and the asylum office issues a copy to the representative of record, if any.

C. PREPARE A NOTICE TO APPEAR (NTA)

Asylum office personnel generate this form through RAPS using the following commands:

RAPS Command: "OSCG" and "OSCP"

- OSC Generation (OSCG) screen. Update the highlighted fields.
- OSC Print (OSCP) screen

The information concerning the individual's date, place and manner of entry must be consistent with the same information gleaned during the asylum interview, or from the I-589, if the applicant failed to appear for an interview. See Section III(P), *Overview of Pre-Reform and Reform Application Processes* for guidance on evidence that may be used to support an NTA in pre-reform cases.

Check with local asylum office management concerning who is responsible for placing information about the hearing on the NTA.

At the time of service, asylum office personnel complete the section on page 1 for the place, date and time of the individual's hearing before the Immigration Court. Asylum office personnel obtain this information through ANSIR.

An SAO signs and dates the NTA on the front page. The INS officer who serves the NTA to the applicant completes the certificate of service section on page 2. The applicant receives a copy of the NTA. The NTA with the original signature of the SAO

must be served on the Immigration Court.

D. PREPARE A FORM I-213, RECORD OF DEPORTABLE/INADMISSABLE ALIEN

Asylum Office personnel generate this form through RAPS from the OSC Print (OSCP) screen. Each individual on a case receives his/her own Form I-213, if required. Information concerning the individual's date, place and manner of entry must be consistent with the same information gleaned during the asylum interview, or from the I-589, if the applicant failed to appear for an interview.

The individual who prepares the Form I-213 signs and the dates it at the "Signature and Title of INS Official" line. The SAO signs the form as the supervisory review official in the bottom right-hand corner box ("Examining Officer: [SAO signature]") For a description of the data to be entered in each field, see Melville, Rosemary Langley. INS Asylum Division. *Guidance for Completing Form I-213, Record of Deportable Alien*. Memorandum to Asylum Office Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 12 May 1995), 5 p.

E. PREPARE AN I-94 CARD

Each individual who is granted asylum, including dependents on the P.A.'s application, receives his/her own I-94 card. There cannot be any crossed-out corrections or any corrections using "white-out."

Mandatory information on the card includes:

- A-number
- Family name and first name
- Birth date (day/month/year format)
- Country of citizenship
- Address while in the United States

Asylum office personnel endorse the I-94 card to state:

An asylum office may substitute "Act" for "INA"

Asylum status granted indefinitely pursuant to section 208 of the INA.

Indicate the three-letter asylum office code (e.g., ZAR) along with the initials and officer number (e.g. ZAR001) of the AO/SAO who makes the final decision. Place the date next to this information. The date corresponds to the FDEC date of "G1" in RAPS.

V. APPENDICES

The attached "Table of Appendices" contains all appendices referred to in the Manual. If an Appendix is a form letter or notice, asylum office personnel must copy the standard language onto its own office letterhead and insert the following into the letter or notice:

- Date the letter is mailed or personally served on the applicant
- Name and address of Principal Applicant
- A-number of Principal Applicant
- A-number of any dependent on the case
- Subject of the Letter ("Re: ...") (where applicable)
- Salutation ("Dear Mr. or Ms. ...")

- Closing (e.g., "Sincerely" and the Name and Title of the Asylum Office Director
- Name of any representative of record after a carbon copy ("cc:") symbol.

The name of the letter is centered, bolded and underlined just above the beginning of the text.

If the Appendix is a form for an applicant, interpreter or representative to complete, the asylum office may use the format provided or another format, as long as the standard components and language remain intact.

Any bold language in brackets indicates where text specific to the applicant must be inserted (the text should not be in bold when inserted). Asylum office personnel must delete the brackets after inserting the information.

For any type of *Referral Notice*, asylum office personnel may delete from the template any boxes that do not pertain to the reason(s) why the asylum office is referring the asylum application. Check the box(es) that apply after deletion of the ones that are not particular to the applicant.